

**Chapter 17.400****ADMINISTRATION OF LAND USE AND DEVELOPMENT****Sections:****Section 17.400.010 Purpose and Applicability of Review Procedures****Section 17.400.020 Type I Procedure (Ministerial)****Section 17.400.030 Type II Procedure (Administrative)****Section 17.400.040 Type III Procedure (Quasi-Judicial)****Section 17.400.050 Type IV Procedure (Legislative)****Section 17.400.060 General Provisions Applicable to All Reviews****Section 17.400.070 Special Procedures – Expedited Land Divisions****Section 17.400.080 Neighborhood Meetings****Section 17.400.090 Traffic Impact Studies****Section 17.400.010 Purpose and Applicability of Review Procedures**

**A. Purpose.** The purpose of this Chapter is to establish standard decision making procedures that will enable the City of Damascus, the applicant, and the public to reasonably review applications and participate in the local decision-making process in a timely and effective manner. Table 17.400.010(A) provides a key for determining the review procedure and the decision making body for particular approvals.

**B. Applicability of Review Procedures.** All land use and development permit applications and approvals, except Building Permits, shall be decided by using the procedures contained in this Chapter. The procedure “type” assigned to each application governs the decision making process for that permit or approval. There are four types of permit/approval procedures: Type I, II, III, and IV. These procedures are described in Subsections (B)(1 – 4) below. Table 17.401.010 lists all of the City’s land use and development approvals and their required review procedure(s).

1. **Type I Procedure (Administrative).** Type I decisions are made by the City Planning Authority, or someone they officially designates, without public notice and without a public hearing. The Type I procedure is used when there are clear and objective approval criteria, and applying City standards and criteria requires no use of discretion.
2. **Type II Procedure (Administrative).** Type II decisions are made by the City Planning Authority with public notice, and an opportunity for a public hearing if appealed. The appeal of a Type II decision is heard by the Planning Commission or a Hearings Examiner.

3. **Type III Procedure (Quasi-Judicial).** Type III decisions are made by the Planning Commission or Hearings Examiner after a public hearing, with appeals reviewed by the City Council. Type III decisions generally use discretionary approval criteria.
4. **Type IV Procedure (Legislative).** Type IV procedures apply to legislative matters. Legislative matters involve the creation, revision, or large-scale implementation of public policy (e.g., adoption of land use regulations, Zone Changes, and Comprehensive Plan Amendments that apply to entire zones, not just one property). Type IV matters are considered initially by the Planning Commission with final decisions made by the City Council.

**Table 17.400.010(A) Summary of Approvals by Type of Review Procedure**

Approvals*	Review Procedures	Applicable Regulations
Access Permit (public street)	Type I	Chapters 17.301, 17.403;
Building Permit	N/A	Building Code
Code Amendment	Type IV	Chapter 17.409
Code Interpretation	Type [II/III]	Chapter 17.410
Comprehensive Plan Text Amendment	Type IV	Comprehensive Plan, Chapter 17.409
Conditional Use Permit	Type III	Chapter 17.404
Flood Plain Development Permit	Type I	Building Code
Home Based Business Permit exceeding Section 17.201.090	Type [II]	Chapter 17.412
Land Use Review	Type I	Chapter 17.401, Building Code
Lot of Record Determination	Type I	Chapter 17.402
Modification to Approval	Type I/II/III (minor or major)	Chapter 17.408
Non-Conforming Use or Development Confirmation	Type I	Chapter 17.407
Partition	Type II	Chapter 17.403
Planned Development	Type III	Chapter 17.406
Property Line Adjustments and Lot Consolidations	Type I	Chapter 17.403
Sign Permit	Type I	Chapter 17.305
Site Design Review	Type II and III	Chapter 17.401
Subdivision		Chapter 17.403
Preliminary Plat	Type III	
Final Plat	Type [I/II]	

**Table 17.400.010(A) Summary of Approvals by Type of Review Procedure  
(Continued)**

<b>Approvals*</b>	<b>Review Procedures</b>	<b>Applicable Regulations</b>
Temporary Use Permit	Type II/III	Chapter 17.411
Tree Removal	Type I/II	Chapter 17.309, Municipal Code Chapters 16.32 and 16.35
Variance Class A	Type I	Chapter 17.405
Class B	Type II	Chapter 17.405
Class C	Type III	Chapter 17.405
Zoning or Comprehensive Plan Map Change		
Quasi-Judicial (no Plan Amendment required)	Type III	Chapter 17.409
Legislative (Plan Amendment)	Type IV	Chapter 17.409

\* The applicant may be required to obtain approvals from other agencies, such as a road authority for some types of approvals. The City notifies agencies of applications that may affect their facilities or services.

### **Section 17.400.020 Type I Procedure (Ministerial).**

#### **A. Application Requirements.**

1. **Application Forms.** Type I applications shall be made on forms provided by the City Planning Authority.
2. **Application Requirements.** Type I applications shall:
  - a. Include the information requested on the application form;
  - b. Address the criteria in sufficient detail for review and action; and
  - c. Be filed with the required fee.

**B. Administrative Decision Requirements.** The City Planning Authority decision shall address all of the approval criteria, including applicable requirements of any applicable government agency. Based on the criteria and the facts contained within the record, the City Planning Authority shall approve or deny the requested permit or action. A written record of the decision shall be provided to the applicant and kept on file at City Hall.

**C. Final Decision.** A Type I decision is the final decision of the City. It cannot be appealed.

**D. Effective Date.** A Type I decision is final on the date it is made.

**Section 17.400.030 Type II Procedure (Administrative).**

**A. Application Requirements.**

1. **Application Forms.** Type II applications shall be made on forms provided by the City Authority.
2. **Submittal Information.** The application shall:
  - a. Include the information requested on the application form;
  - b. Be filed with a narrative statement that explains how the application satisfies each and all of the relevant criteria and standards in sufficient detail for review and decision making.

Note: additional information may be required under the specific application requirements for each approval, e.g., Land Use Review (Chapter 17.401), Land Divisions (Chapter 17.403), Variance Permits (Chapter 17.405), Modifications (Chapter 17.408), Comprehensive Plan, Zoning Map and Text Amendments (Chapter 17.409), Code Interpretations (Chapter 17.410), Temporary Use Permits (Chapter 17.411), and Home Based Business Permits (Chapter 17.412); and

- c. Be accompanied by the required fee.

**B. Notice of Application for Type II Administrative Decision.**

1. Before making a Type II Administrative Decision, the City Planning Authority shall mail notice to:
  - a. All owners of record of real property within a minimum of three hundred feet of the subject site;
  - b. All City recognized neighborhood groups or associations whose boundaries include the site;
  - c. Any person who submits a written request to receive a notice; and
  - d. Any governmental agency that is entitled to notice under an intergovernmental agreement entered into with the City. The City may notify other affected agencies. The City shall also notify all other affected service providers, including sewer, water, fire, and emergency response providers.
  - e. Agencies that provide transportation facilities and services, including road and rail authorities, the applicable Metropolitan Planning Organization (MPO) and Oregon Department of Transportation

(ODOT), for land use applications that require public hearings, involve Subdivision or Partition, affect private access to roads, or are within an airport noise corridor. The City shall allow the agency to review, comment on, and suggest conditions of approval for the application.

2. The purpose of the notice is to give nearby property owners and other interested people the opportunity to submit written comments about the application before the Type II decision is made. The goal of this notice is to invite people to participate early in the decision making process.
3. Notice of a pending Type II Administrative Decision shall:
  - a. Provide a fourteen day period for submitting written comments before a decision is made on the permit;
  - b. List the relevant approval criteria by name and number of Code sections;
  - c. State the place, date and time the comments are due, and the person to whom the comments should be addressed;
  - d. Include the name and telephone number of a contact person regarding the Administrative decision;
  - e. Describe the proposal and identify the specific permits or approvals requested;
  - f. Describe the street address or other easily understandable reference to the location of the site;
  - g. State that if any person fails to address the relevant approval criteria with enough detail, they may not be able to appeal to the Land Use Board of Appeals or Circuit Court on that issue. Only comments on the relevant approval criteria are considered relevant evidence;
  - h. State that all evidence relied upon by the City Planning Official or designee to make this decision is in the public record, available for public review. Copies of this evidence can be obtained at a reasonable cost from the City;
  - i. State that after the comment period closes, the City Planning Authority shall issue a Type II Administrative Decision, and that the decision shall be mailed to the applicant and to anyone else who submitted written comments or who is otherwise legally entitled to notice; and

- j. Contain the following notice: “Notice to mortgagee, lien holder, vendor, or seller: The City of Damascus Development Code requires that if you receive this notice it shall be promptly forwarded to the purchaser.”

**C. Administrative Decision Requirements.** The City Planning Authority shall make a Type II written decision addressing all of the relevant approval criteria and standards. Based upon the criteria and standards, and the facts contained within the record, the City Planning Authority shall approve, approve with conditions, or deny the requested permit or action. Alternatively, the City Planning Authority, and/or the applicant, may refer the application to the Hearings Officer/Planning Commission for review in a public hearing, in which case the review shall follow the Type III procedures in Section 17.400.040.

**Note:** If the City provides the option of referring the application to a public hearing, the City may want to require parties requesting a hearing to pay a fee covering the additional costs associated with the Type III review.

**D. Notice of Decision.**

1. Within five days after the City Planning Authority signs the decision, a Notice of Decision shall be sent by mail to:
  - a. The applicant and all owners or contract purchasers of record of the site that is the subject of the application;
  - b. Any person who submits a written request to receive notice, or provides comments during the application review period;
  - c. Any City-recognized neighborhood group or association whose boundaries include the site; and
  - d. Any governmental agency that is entitled to notice under an intergovernmental agreement entered into with the City, and other agencies that were notified or provided comments during the application review period
2. The City Planning Authority shall cause an affidavit of mailing the notice to be prepared and made a part of the file. The affidavit shall show the date the notice was mailed and shall demonstrate that the notice was mailed to the parties above and was mailed within the time required by law.
3. The Type II Notice of Decision shall contain:
  - a. A description of the applicant’s proposal and the City’s decision on the proposal (i.e., may be a summary);

- b. The address or other geographic description of the property proposed for development, including a map of the property in relation to the surrounding area, where applicable;
- c. A statement of where the City's decision can be obtained;
- d. The date the decision shall become final, unless appealed;
- e. A statement that all persons entitled to notice may appeal the decision; and
- f. A statement briefly explaining how to file an appeal, the deadline for filing an appeal, and where to obtain further information concerning the appeal process.

**E. Final Decision and Effective Date.** A Type II administrative decision is final for purposes of appeal, when it is mailed by the City. A Type II administrative decision is effective on the day after the appeal period expires. If an appeal is filed, the decision is effective when the appeal is decided.

**F. Appeal.** A Type II administrative decision may be appealed to the Planning Commission as follows:

1. **Who May Appeal.** The following people have legal standing to appeal a Type II Administrative Decision:
  - a. The applicant or owner of the subject property; and/or
  - b. Any other person who participated in the proceeding by submitting written comments.
2. **Appeal Filing Procedure.**
  - a. *Notice of appeal.* Any person with standing to appeal, as provided in Subsection (F)(1), above, may appeal a Type II Administrative Decision by filing a Notice of Appeal according to the following procedures;
  - b. *Time for filing.* A Notice of Appeal shall be filed with the City Planning Authority or designee within fourteen days of the date the Notice of Decision was mailed;
  - c. *Content of notice of appeal.* The Notice of Appeal shall contain:
    - i. An identification of the decision being appealed, including the date of the decision;

- ii. A statement demonstrating the person filing the Notice of Appeal has standing to appeal;
  - iii. A statement explaining the specific issues being raised on appeal;
  - iv. If the appellant is not the applicant, a statement demonstrating that the appeal issues were raised during the comment period; and
  - v. Filing fee.
3. **Scope of Appeal.** The appeal of a Type II Administrative Decision by a person with standing shall be a hearing de novo before the Planning Commission. The appeal shall not be limited to the application materials, evidence and other documentation, and specific issues raised in the Type II Administrative Review. The Planning Commission may allow additional evidence, testimony or argument concerning any relevant standard, criterion, condition, or issue.
4. **Appeal Procedures.** Type III notice, hearing procedures and decision process shall also be used for all Type II Administrative Appeals, as provided in Sections 17.400.040(C) – (E).
5. **Further Appeal to City Council.** The decision of the Planning Commission regarding an appeal of a Type II Administrative Decision is the final decision of the City unless appealed to City Council. An appeal to City Council shall follow the same notification and hearing procedures as for the Planning Commission hearing. The decision of the City Council on an appeal is final and effective on the date it is mailed by the City. The City Council's decision may be appealed to the State Land Use Board of Appeals pursuant to ORS 197.805 – 197.860.

#### **Section 17.400.040 Type III Procedure (Quasi-Judicial).**

- A. Pre-application Conference.** A pre-application conference is required for all Type III applications. The requirements and procedures for a pre-application conference are described in Section 17.400.060(C).
- B. Application Requirements.**
- 1. **Application Forms.** Type III applications shall be made on forms provided by the City Planning Authority; if a Type II application is referred to a Type III hearing, either voluntarily by the applicant or staff, or upon appeal, no new application is required.
  - 2. **Submittal Information.** When a Type III application is required, it shall:
    - a. Include the information requested on the application form;



- b. Be filed with one copy of a narrative statement that explains how the application satisfies each and all of the relevant criteria and standards in sufficient detail for review and decision-making.

Note: additional information may be required under the specific application requirements for each approval, e.g., Land Use and Site Design Review (Chapter 17.401), Land Divisions (Chapter 17.403), Conditional Use Permits (Chapter 17.404); Planned Developments (Chapter 17.406); Modifications (Chapter 17.408), and Code Interpretations (Chapter 17.410);

- c. Be accompanied by the required fee; and
- d. The City shall provide and mail the notice of application.

**C. Notice of Hearing.**

1. **Mailed Notice.** The City shall mail the notice of the Type III action. The records of the Clackamas County Assessor's Office are the official records for determining ownership.
2. Notice of a Type III application hearing or Type II appeal hearing shall be given by the City Planning Authority in the following manner:
  - a. At least twenty days before the hearing date, notice shall be mailed to:
    - i. The applicant and all owners or contract purchasers of record of the property that is the subject of the application;
    - ii. All property owners of record within three hundred feet of the site;
    - iii. Any governmental agency that is entitled to notice under an intergovernmental agreement entered into with the City. The City may notify other affected agencies. The City shall also notify all other affected service providers, including sewer, water, fire, and emergency response providers.
    - iv. Agencies that provide transportation facilities and services, including road and rail authorities, the applicable Metropolitan Planning Organization (MPO) and Oregon Department of Transportation (ODOT), for land use applications that require public hearings, involve Subdivision or Partition, affect private access to roads, or are within an airport noise corridor. The City shall allow the agency to review, comment on, and suggest conditions of approval for the application.

- v. Owners of airports in the vicinity shall be notified of a proposed Zone Change in accordance with ORS 227.175;
  - vi. Any neighborhood or community organization recognized by the City Council and whose boundaries include the property proposed for development;
  - vii. Any person who submits a written request to receive notice;
  - viii. For appeals, the appellant and all persons who provided testimony in the original decision; and
  - ix. For a land use Zone Change affecting a manufactured home or mobile home park, all mailing addresses within the park, in accordance with ORS 227.175.
- b. The City Planning Authority shall have an affidavit of notice be prepared and made a part of the file. The affidavit shall state the date that the notice was mailed to the persons who must receive notice.
  - c. At least fourteen business days before the hearing, notice of the hearing shall be printed in a newspaper of general circulation in the City. The newspaper's affidavit of publication of the notice shall be made part of the administrative record.
3. **Content of Notice.** Notice of appeal of a Type II Administrative decision or notice of a Type III hearing to be mailed and published per Subsection (C)(1) above shall contain the following information:
- a. The nature of the application and the proposed land use or uses that could be authorized for the property;
  - b. The applicable criteria and standards from the Development Code(s) that apply to the application;
  - c. The street address or other easily understood geographical reference to the subject property;
  - d. The date, time, and location of the public hearing;
  - e. A statement that the failure to raise an issue in person, or by letter at the hearing, or failure to provide statements or evidence sufficient to afford the decision-maker an opportunity to respond to the issue, means that an appeal based on that issue cannot be filed with the State Land Use Board of Appeals;

- f. The name of a City representative to contact and the telephone number where additional information on the application may be obtained;
- g. A statement that a copy of the application, all documents and evidence submitted by or for the applicant, and the applicable criteria and standards can be reviewed at Damascus City Hall at no cost and that copies shall be provided at a reasonable cost;
- h. A statement that a copy of the City's staff report and recommendation to the hearings body shall be available for review at no cost at least seven days before the hearing, and that a copy shall be provided on request at a reasonable cost;
- i. A general explanation of the requirements to submit testimony, and the procedure for conducting public hearings; and
- j. The following notice: "Notice to mortgagee, lien holder, vendor, or seller: The City of Damascus Development Code requires that if you receive this notice it shall be promptly forwarded to the purchaser."

**D. Conduct of the Public Hearing.**

- 1. At the commencement of the hearing, the hearings body shall state to those in attendance:
  - a. The applicable approval criteria and standards that apply to the application or appeal;
  - b. A statement that testimony and evidence shall concern the approval criteria described in the Staff Report, or other criteria in the Comprehensive Plan or land use regulations that the person testifying believes to apply to the decision;
  - c. A statement that failure to raise an issue with sufficient detail to give the hearings body and the parties an opportunity to respond to the issue, means that no appeal may be made to the State Land Use Board of Appeals on that issue;
  - d. Before the conclusion of the initial evidentiary hearing, any participant may ask the Planning Commission or Hearings Examiner for an opportunity to present additional relevant evidence or testimony that is within the scope of the hearing. The hearings body shall grant the request by scheduling a date to finish the hearing (a "continuance") per Subsection (D)(1)(b), or by leaving the record open for additional written evidence or testimony per Subsection (D)(1)(c).

2. If the Planning Commission grants a continuance, the completion of the hearing shall be continued to a date, time, and place at least seven days after the date of the first evidentiary hearing. An opportunity shall be provided at the second hearing for persons to present and respond to new written evidence and oral testimony. If new written evidence is submitted at the second hearing, any person may request, before the conclusion of the second hearing, that the record be left open for at least seven days, so that they can submit additional written evidence or testimony in response to the new written evidence;
3. If the Planning Commission leaves the record open for additional written evidence or testimony, the record shall be left open for at least seven days after the hearing. Any participant may ask the City in writing for an opportunity to respond to new evidence submitted during the period that the record was left open. If such a request is filed, the Planning Commission shall reopen the record.
  - a. When the Planning Commission reopens the record to admit new evidence or testimony, any person may raise new issues that relate to that new evidence or testimony;
  - b. An extension of the hearing or record granted pursuant to Section 17.400.040(D) is subject to the limitations of ORS 227.178 (“120-day rule”), unless the continuance or extension is requested or agreed to by the applicant;
  - c. If requested by the applicant, the City shall allow the applicant at least seven days after the record is closed to all other persons to submit final written arguments in support of the application, unless the applicant expressly waives this right. The applicant’s final submittal shall be part of the record but shall not include any new evidence;
  - d. The record shall contain all testimony and evidence that is submitted to the City and that the hearings body has not rejected;
  - e. In making its decision, the hearings body may take notice of facts not in the hearing record (e.g., local, state, or federal regulations; previous City decisions; case law; Staff Reports). The review authority must announce its intention to take notice of such facts in its deliberations, and allow persons who previously participated in the hearing to request the hearing record be reopened, if necessary, to present evidence concerning the noticed facts;
  - f. The review authority shall retain custody of the record until the City issues a final decision.

4. Participants in the appeal of a Type II Administrative decision or participants in a Type III hearing are entitled to an impartial review authority as free from potential conflicts of interest and pre-hearing ex parte contacts (see Section 17.400.040(D)(5) below) as reasonably possible. However, the public has a countervailing right of free access to public officials. Therefore:
  - a. At the beginning of the public hearing, hearings body members shall disclose the substance of any pre-hearing ex parte contacts (as defined in Section 17.400.040(D)(5) below) concerning the application or appeal. They shall state whether the contact has impaired their impartiality or their ability to vote on the matter and shall participate or abstain accordingly;
  - b. A member of the hearings body shall not participate in any proceeding in which they, or any of the following, has a direct or substantial financial interest: their spouse, brother, sister, child, parent, father-in-law, mother-in-law, partner, any business in which they are then serving or have served within the previous two years, or any business with which they are negotiating for or have an arrangement or understanding concerning prospective partnership or employment. Any actual or potential interest shall be disclosed at the hearing where the action is being taken;
  - c. Disqualification of a member of the hearings body due to contacts or conflict may be ordered by a majority of the members present and voting. The person who is the subject of the motion may not vote on the motion to disqualify;
  - d. If all members of the Planning Commission abstain or are disqualified, the City Council shall be the hearing body. If all members of the City Council abstain or are disqualified, a quorum of those members present who declare their reasons for abstention or disqualification shall be re-qualified to make a decision; and
  - e. Any member of the public may raise conflict of interest issues prior to or during the hearing, to which the member of the hearings body shall reply in accordance with this Section.
5. **Ex Parte Communications.**
  - a. Members of the hearings body shall not:
    - i. Communicate directly or indirectly with any applicant, appellant, other party to the proceedings, or representative of a party about any issue involved in a hearing without giving notice per Subsection (D)(4)(c) above;

- ii. Take official notice of any communication, report, or other materials outside the record prepared by the proponents or opponents in connection with the particular case, unless all participants are given the opportunity to respond to the noticed materials.
  - b. No decision or action of the hearings body shall be invalid due to ex parte contacts or bias resulting from ex parte contacts, if the person receiving contact:
    - i. Places in the record the substance of any written or oral ex parte communications concerning the decision or action; and participants' right to dispute the substance of the communication made. This announcement shall be made at the first hearing following the communication during which action shall be considered or taken on the subject of the communication.
    - ii. Makes a public announcement about the content of the communication and of all participants' rights to dispute the substance of the communication made. This announcement shall be made at the first hearing following the communication during which action shall be considered or taken on the subject of the communication.
  - c. A communication between City staff and the hearings body is not considered an ex parte contact.
6. **Presenting and Receiving Evidence.**
- a. The hearings body may set reasonable time limits for oral presentations and may limit or exclude cumulative, repetitious, irrelevant or personally derogatory testimony or evidence;
  - b. No oral testimony shall be accepted after the close of the public hearing. Written testimony may be received after the close of the public hearing, only as provided in Section 17.400.040; and
  - c. Members of the hearings body may visit the property and the surrounding area, and may use information obtained during the site visit to support their decision, if the information relied upon is disclosed at the beginning of the hearing and an opportunity is provided to dispute the evidence.

**E. The Decision Process.**

- 1. **Basis for Decision.** Approval or denial of an appeal of a Type II Administrative decision or of a Type III application shall be based on standards and criteria in the Development Code. The standards and

criteria shall relate approval, approval with conditions, or denial of a discretionary development permit application to the development regulations and, when appropriate, to the Comprehensive Plan for the area in which the development would occur and to the development regulations and Comprehensive Plan for the City as a whole;

2. **Findings and Conclusions.** Approval or denial shall be based upon the criteria and standards considered relevant to the decision. The written decision shall explain the relevant criteria and standards, state the facts relied upon in rendering the decision, and justify the decision according to the criteria, standards, and facts;
3. **Form of Decision.** The Hearings Body shall issue a final written order containing the findings and conclusions stated in Subsection (E)(2), which either approves, denies, or approves with specific conditions. The Hearings Body may also issue appropriate intermediate rulings when more than one permit or decision is required;
4. **Decision-making Time Limits.** A final order for any Type II Administrative Appeal or Type III action shall be filed with the City Planning Authority or designee within ten business days after the close of the deliberation;
5. **Notice of Decision.** Written notice of a Type II Administrative Appeal decision or a Type III decision shall be mailed to the applicant and to all participants of record within ten business days after the hearings body decision. Failure of any person to receive mailed notice shall not invalidate the decision, provided that a good faith attempt was made to mail the notice.
6. **Final Decision and Effective Date.** The decision of the hearings body on any Type II appeal or any Type III application is final for purposes of appeal on the date it is mailed by the City. The decision is effective on the day after the appeal period expires. If an appeal is filed, the decision becomes effective on the day after the appeal is decided by the City Council. The notification and hearings procedures for Type III applications on appeal to the City Council shall be the same as for the initial hearing.

#### **Section 17.400.050 Type IV Procedure (Legislative).**

- A. **Pre-Application Conference.** A pre-application conference is required for all Type IV applications initiated by a party other than the City of Damascus. The requirements and procedures for a pre-application conference are described in Section 17.400.060(C).

**B. Application Requirements.**

1. **Application Forms.** Type IV applications shall be made on forms provided by the City Planning Authority.
2. **Submittal Information.** The application shall contain:
  - a. The information requested on the application form;
  - b. A map and/or plan addressing the appropriate criteria and standards in sufficient detail for review and decision (as applicable);
  - c. The required fee; and
  - d. One copy of a letter or narrative statement that explains how the application satisfies each and all of the relevant approval criteria and standards.

**C. Notice of Hearing.**

1. **Required Hearings.** A minimum of two hearings, one before the Planning Commission and one before the City Council, are required for all Type IV applications, except annexations where only a hearing by the City Council is required.
2. **Notification Requirements.** Notice of public hearings for the request shall be given by the City Planning Authority in the following manner:
  - a. At least twenty days, but not more than forty days, before the date of the first hearing on any Type IV application, a notice shall be prepared in conformance with ORS 227.175 and mailed to:
    - i. Each owner whose property would be redesignated in order to implement the Ordinance (including owners of property subject to a Comprehensive Plan Amendment shall be notified if a Zone Change would be required to implement the proposed Comprehensive Plan Amendment);
    - ii. Any affected governmental agency and agencies that provide transportation facilities and services, including road and rail authorities, the applicable Metropolitan Planning Organization (MPO) and ODOT, for land use applications that require public hearings, involve subdivision or partition, affect private access to roads, or are within an airport noise corridor;
    - iii. The City shall also notify all other affected service providers, including sewer, water, fire, and emergency response providers;
    - iv. Any person who requests notice in writing;



- v. For a Zone Change affecting a manufactured home or mobile home park, all mailing addresses within the park, in accordance with ORS 227.175; and
    - vi. Owners of airports shall be notified of a proposed zone change in accordance with ORS 227.175.
  - b. At least ten days before the scheduled Planning Commission public hearing date, and fourteen days before the City Council hearing date, public notice shall be published in a newspaper of general circulation in the City.
  - c. The City Planning Authority shall:
    - i. For each mailing of notice, file an affidavit of mailing in the record as provided by Subsection (C)(2)(a); and
    - ii. For each published notice, file in the record the affidavit of publication in a newspaper that is required in Subsection (C)(2)(b).
  - d. The Oregon Department of Land Conservation and Development (DLCD) shall be notified in writing in accordance with applicable Oregon Administrative Rule.
  - e. Notifications for annexation shall follow the provisions of Oregon Revised Statute Chapter 222.
3. **Content of Notices.** The mailed and published notices shall include the following information:
- a. The number and title of the file containing the application, and the address and telephone number of the City Planning Authority office where additional information about the application can be obtained;
  - b. The proposed site location;
  - c. A description of the proposed site and the proposal in enough detail for people to determine what change is proposed, reference to the applicable Code criteria, and the place where all relevant materials and information may be obtained or reviewed;
  - d. The time(s), place(s), and date(s) of the public hearing(s); a statement that public oral or written testimony is invited; and a statement that the hearing will be held under this title and rules of procedure adopted by the Council and available at City Hall; and

- e. Each mailed notice required by Section 17.400.050(C) shall contain the following statement: “Notice to mortgagee, lien holder, vendor, or seller: The Damascus Development Code requires that if you receive this notice it shall be promptly forwarded to the purchaser.”

4. **Failure to Receive Notice.** The failure of any person to receive notice shall not invalidate the action, providing:

- a. Personal notice is deemed given where the notice is deposited with the United States Postal Service;
- b. Published notice is deemed given on the date it is published.

**D. Hearing Process and Procedure.**

1. Unless otherwise provided in the rules of procedure adopted by the City Council:

- a. The presiding officer of the Planning Commission and of the City Council shall have the authority to:
  - i. Regulate the course, sequence, and decorum of the hearing;
  - ii. Direct procedural requirements or similar matters; and
  - iii. Impose reasonable time limits for oral presentations.
- b. No person shall address the Commission or the Council without:
  - i. Receiving recognition from the presiding officer; and
  - ii. Stating their full name and address.
- c. Disruptive conduct such as applause, cheering, or display of signs shall be cause for expulsion of a person or persons from the hearing, termination or continuation of the hearing, or other appropriate action determined by the presiding officer.

2. Unless otherwise provided in the rules of procedures adopted by the Council, the presiding officer of the Commission and of the Council shall conduct the hearing as follows:

- a. The presiding officer shall begin the hearing with a statement of the nature of the matter before the body, a general summary of the procedures, a summary of the standards for decision making, and

whether the decision which will be made is a recommendation to the City Council or the final decision of the Council; shall be presented;

- b. The City Planning Authority report and other applicable staff reports shall be presented;
- c. The public shall be invited to testify;
- d. The public hearing may be continued to allow additional testimony or it may be closed; and
- e. The body's deliberation may include questions to the staff, comments from the staff, and inquiries directed to any person present.

**E. Continuation of the Public Hearing.** The Planning Commission or the City Council may continue any hearing, and no additional notice of hearing shall be required if the matter is continued to a specified place, date, and time.

**F. Decision-Making Criteria.** The recommendation by the Planning Commission and the decision by the City Council shall be based on the following factors:

- 1. Approval of the request is consistent with the Statewide Planning Goals;
- 2. Approval of the request is consistent with the Comprehensive Plan; and
- 3. The property and affected area is presently or may be provided with adequate public facilities, services and transportation networks to support the use, or such facilities, services and transportation networks are planned to be provided concurrently with the development of the property.

**G. Approval Process and Authority.**

- 1. The Planning Commission shall:
  - a. After notice and a public hearing, vote on and prepare a recommendation to the City Council to approve, approve with modifications, approve with conditions, deny the proposed change, or adopt an alternative; and
  - b. Within fourteen business days of determining a recommendation, the presiding officer shall sign the written recommendation, and it shall be filed with the City Planning Authority.
- 2. The City Council shall:
  - a. Approve, approve with modifications, approve with conditions, deny, or adopt an alternative to an application for legislative change, or remand

the application to the Planning Commission for rehearing and reconsideration on all or part of the application;

- b. Consider the recommendation of the Planning Commission; however, the City Council is not bound by the Commission's recommendation; and
- c. Act by Ordinance, which shall be signed by the Mayor after the Council's adoption of the Ordinance.

**H. Vote Required for a Legislative Change.**

- 1. A vote by a majority of the qualified voting members of the Planning Commission present is required for a recommendation for approval, approval with modifications, approval with conditions, denial or adoption of an alternative.
- 2. A vote by a majority of the qualified members of the City Council present is required to decide any motion made on the proposal.

**I. Notice of Decision.** Notice of a Type IV decision shall be mailed to the applicant, all participants of record, and the Department of Land Conservation and Development, within five business days after the City Council decision is filed with the City Planning Authority. The City shall also provide notice to all persons as required by other applicable laws.

**J. Final Decision and Effective Date.** A Type IV decision, if approved, shall take effect and shall become final as specified in the enacting Ordinance, or if not approved, upon mailing of the notice of decision to the applicant.

**K. Record of the Public Hearing.**

- 1. A verbatim record of the proceeding shall be made by stenographic, mechanical, or electronic means. It is not necessary to transcribe an electronic record. The minutes and other evidence presented as a part of the hearing shall be part of the record;
- 2. All exhibits received and displayed shall be marked to provide identification and shall be part of the record;
- 3. The official record shall include:
  - a. All materials considered by the hearings body;
  - b. All materials submitted by the City Planning Authority to the hearings body regarding the application;

- c. The verbatim record made by the stenographic, mechanical, or electronic means; the minutes of the hearing; and other documents considered;
- d. The final Ordinance;
- e. All correspondence; and
- f. A copy of the notices that were given as required by this Chapter.

### **Section 17.400.060 General Provisions Applicable to All Reviews**

**A. 120-Day Rule.** The City shall take final action on Type I, II, and III permit applications that are subject to this Chapter, including resolution of all appeals, within 120 days from the date the application is deemed as complete, unless the applicant requests an extension in writing. Any exceptions to this rule shall conform to the provisions of ORS 227.178. The 120-day rule does not apply to Type IV legislative decisions - Plan and Code Amendments - under ORS 227.178.

**B. Time Computation.** In computing any period of time prescribed or allowed by this Chapter, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday or legal holiday, including Sunday, in which event, the period runs until the end of the next day which is not a Saturday or legal holiday.

### **C. Pre-application Conferences.**

1. **Participants.** When a pre-application conference is required, the applicant shall meet with the City Planning Authority and other parties as appropriate;
2. **Information Provided.** At such conference, the City Planning Authority shall:
  - a. Cite the Comprehensive Plan policies and Map designations applicable to the proposal;
  - b. Cite the Ordinance provisions, including substantive and procedural requirements applicable to the proposal;
  - c. Provide available technical data and assistance that will aid the applicant;
  - d. Identify other governmental policies and regulations that relate to the application; and

- e. Reasonably identify other opportunities or constraints concerning the application.
- 3. **Disclaimer.** Failure of the City Planning Authority to provide any of the information required by this Section 17.400.060(C) shall not constitute a waiver of any of the standards, criteria or requirements for the application;
- 4. **Changes in the Law.** Due to possible changes in Federal, State, regional, and local law, the applicant is responsible for ensuring that the application complies with all applicable laws on the day the application is deemed complete.

#### **D. Acceptance and Review of Applications.**

##### **1. Initiation of Applications:**

- a. Applications for approval under this Chapter may be initiated by:
  - i. Motion of City Council;
  - ii. Motion of the Planning Commission;
  - iii. The City Planning Authority; or
  - iv. A record owner of property (person(s) whose name is on the most recently recorded deed), or contract purchaser with written permission from the record owner.
- b. Any person authorized to submit an application for approval may be represented by an agent authorized in writing to make the application on their behalf.

##### **2. Consolidation of Proceedings.** When an applicant applies for more than one type of land use or development permit (e.g., Type II, III and IV) for the same one or more parcels of land, the proceedings shall be consolidated for review and decision.

- a. If more than one approval authority would be required to decide on the applications if submitted separately, then the decision shall be made by the approval authority having original jurisdiction over one of the applications in the following order of preference: the Council, the Commission, or the City Planning Authority.
- b. When proceedings are consolidated:
  - i. The notice shall identify each application to be decided;

- ii. The decision on a Plan Map Amendment shall precede the decision on a proposed land use Zone Change and other decisions on a proposed development. Similarly, the decision on a Zone Map Amendment shall precede the decision on a proposed development and other actions; and
  - iii. Separate findings and decisions shall be made on each application.
3. **Check for Acceptance and Completeness.** In reviewing an application for completeness, the following procedure shall be used:
- a. *Acceptance.* When an application is received by the City, the City Planning Authority shall immediately determine whether the following essential items are present. If the following items are not present, the application shall not be accepted and shall be immediately returned to the applicant:
    - i. The required form; and
    - ii. The signature of the applicant on the required form and signed written authorization of the property owner of record if the applicant is not the owner.
  - b. *Completeness.*
    - i. After the application is accepted, the City Planning Authority shall review the application for completeness. If the application is incomplete, the City Planning Authority shall notify the applicant in writing of exactly what information is missing within thirty days of receipt of the application and allow the applicant one hundred eighty days to submit the missing information, or fourteen days to submit a refusal statement;
    - ii. The City Planning Authority shall deem the application complete upon the receipt of all required information, in accordance with the submittal requirements of this Chapter. The applicant shall have the option of withdrawing the application, or refusing to submit information requested by the City Planning Authority in Section 17.400.060, above. For the refusal to be valid, the refusal shall be made in writing and received by the City Planning Authority no later than fourteen days after the date on the City Planning Authority letter of incompleteness. If the applicant refuses in writing to submit the missing information, the application shall be deemed complete on the thirty-first day after the City Planning Authority first accepted the application;

- iii. Approval or denial of the application shall be based upon the standards and criteria that were applicable at the time it was first accepted; and
- iv. The City shall also submit the application for review and comment to the City Engineer, road authority, and other applicable County, State, and federal review agencies.

**4. Changes or Additions to the Application during the Review Period.**

Once an application is deemed complete:

- a. All documents and other evidence relied upon by the applicant shall be submitted to the City Planning Authority at least seven days before the notice of action or hearing is mailed, if possible. Documents or other evidence submitted after that date shall be received by City Planning Authority, and transmitted to the hearings body, but may be too late to include with the staff report and evaluation;
- b. When documents or other evidence are submitted by the applicant during the review period but after the application is deemed complete, the assigned review person or body shall determine whether or not the new documents or other evidence submitted by the applicant significantly change the application;
- c. If the assigned reviewer determines that the new documents or other evidence significantly change the application, the reviewer shall include a written determination that a significant change in the application has occurred as part of the decision. In the alternate, the reviewer may inform the applicant either in writing, or orally at a public hearing, that such changes may constitute a significant change (see (d), below), and allow the applicant to withdraw the new materials submitted, in order to avoid a determination of significant change;
- d. If the applicant's new materials are determined to constitute a significant change in an application that was previously deemed complete, the City shall take one of the following actions, at the choice of the applicant:
  - i. Continue to process the existing application and allow the applicant to submit a new second application with the proposed significant changes. Both the old and the new applications will proceed, but each will be deemed complete on different dates and may therefore be subject to different criteria and standards and different decision dates;



- ii. Suspend the existing application and allow the applicant to submit a new application with the proposed significant changes. Before the existing application can be suspended, the applicant must consent in writing to waive the 120-day rule (Section 4.1.060 above) on the existing application. If the applicant does not consent, the City shall not select this option;
- iii. Reject the new documents or other evidence that has been determined to constitute a significant change, and continue to process the existing application without considering the materials that would constitute a significant change. The City will complete its decision-making process without considering the new evidence;
- e. If a new application is submitted by the applicant, that application shall be subject to a separate check for acceptance and completeness and will be subject to the standards and criteria in effect at the time the new application is accepted.

**E. City Planning Authority Duties.** The Planning Authority shall:

- 1. Prepare application forms based on the criteria and standards in applicable State law, the City's Comprehensive Plan, and implementing Ordinance provisions;
- 2. Process applications in accordance with the provisions of Article 4;
- 3. Prepare a Staff Report that summarizes the application(s) and applicable decision criteria, and provides findings of conformance and/or non-conformance with the criteria. The Staff Report may also provide a recommended decision of: approval; denial; or approval with specific conditions that ensure conformance with the approval criteria;
- 4. Prepare a notice of the proposed decision:
  - a. In the case of an application subject to a Type I or II review process, the Planning Authority shall make the Staff Report and all case-file materials available at the time that the notice of the decision is issued;
  - b. In the case of an application subject to a hearing (Type III or IV process), the Planning Authority shall make the Staff Report available to the public at least seven days prior to the scheduled hearing date, and make the case-file materials available when notice of the hearing is mailed pursuant to the provisions of Article 4.
- 5. Administer the hearings process;

6. File notice of the final decision in the City's records and mail a copy of the notice of the final decision to the applicant; all persons who provided comments or testimony; persons who requested copies of the notice; and any other persons entitled to notice by law;
7. Maintain and preserve the file for each application for the time period required by law. The file shall include, as applicable, a list of persons required to be given notice and a copy of the notice given; the affidavits of notice; the application and all supporting information; the Staff Report; the final decision including the findings, conclusions and conditions, if any; all correspondence; minutes of any meeting at which the application was considered; and any other exhibit, information or documentation which was considered by the decision-maker(s) on the application; and
8. Administer the appeals and review process.

**F. Amended Decision Process.**

1. The purpose of an amended decision process is to allow the City Planning Authority to correct typographical errors, rectify inadvertent omissions and/or make other minor changes that do not materially alter the decision.
2. The City Planning Authority may issue an amended decision after the notice of final decision has been issued but before the appeal period has expired. If such a decision is amended, the decision shall be issued within fourteen business days after the original decision would have become final, but in no event beyond the 120-day period required by State law. A new ten day appeal period shall begin on the day the amended decision is issued.
3. Notice of an amended decision shall be given using the same mailing and distribution list as for the original decision notice.
4. Modifications to approved plans or conditions of approval requested by the applicant shall follow the procedures in Chapter 17.408. All other changes to decisions that are not modifications under Chapter 17.408 follow the appeal process.

**G. Resubmittal of Application Following Denial.** An application that has been denied, or an application that was denied and on appeal or review has not been reversed by a higher authority, including the Land Use Board of Appeals, the Land Conservation and Development Commission or the courts, may not be resubmitted as the same or a substantially similar proposal for the same land for a period of at least twelve months from the date the final City action is made denying the application, unless there is substantial change in the facts or a change in City policy that would change the outcome, as determined by the City Planning Authority.

**H. Appeal Process.** An appeal by a person with standing shall be a hearing de novo and follow the Type III procedure under Section 17.400.040. The appeal shall not be limited to the application materials, evidence and other documentation, and specific issues raised in the proceeding below. The Planning Commission or City Council may allow additional evidence, testimony, or argument concerning any standard, criterion, condition, or issue relevant to the original application.

#### **Section 17.400.070 Special Procedures – Expedited Land Divisions**

**A. Expedited Land Divisions.** An Expedited Land Division (“ELD”) shall be defined and may be used as provided under ORS 197.360 through 197.380.

1. **Selection.** An applicant who wishes to use an Expedited Land Division procedure for a Partition, Subdivision or Planned Development instead of the regular procedure type assigned to it, must request the use of the Expedited Land Division in writing at the time the application is filed, or forfeit his/her right to use it;
2. **Review Procedure.** All applications for Expedited Land Divisions shall comply with ORS 197.360 through 197.380 and the Damascus Comprehensive Plan; ORS 197.360 through ORS 197.380 details the criteria, application and notice requirements, and action and appeal procedures for expedited land divisions.
3. **Appeal Procedure.** An appeal of an ELD shall follow the procedures in ORS 197.375. Where the City has not otherwise appointed a hearings officer (referee) for such appeals, and the City Attorney is a Contractor (not a city employee), the City Attorney shall serve as the referee for Expedited Land Division appeals.

#### **Section 17.400.080 Neighborhood Meetings.**

**A. Purpose and Intent.** Neighborhood meetings encourage citizen involvement and participation, and identification of issues, early in the development process. The purpose of neighborhood meetings is to provide an opportunity for the applicant, surrounding neighbors and interested parties to meet, to review a development proposal, and to identify issues regarding the proposal. These issues can then be addressed prior to application submittal in a manner consistent with the City’s requirements. A neighborhood meeting is intended to facilitate submittal of an application that is more responsive to neighborhood concerns and to expedite and lessen the expense of the review process by reducing continuances and appeals.

**B. Applicability.** Applicants for Type III and IV applications shall conduct a neighborhood meeting to which invitations are sent to all property owners who will receive notice of subsequent public hearings, and recognized neighborhood

association representatives, plus posting of the subject property fourteen days prior to the meeting, prior to submitting their application to the City in order to solicit input and exchange information about the proposed development.

### **C. Procedures**

1. Neighborhood meetings shall be held at a location in the closest practicable proximity to the subject site. The meeting shall be held on a weekday evening, or weekends at any reasonable time
2. At the neighborhood meeting, the applicant shall provide preliminary details of the development, including number and type of dwellings if applicable, proposed uses, street, and parking layouts, approximate building locations and heights, and approximate locations for open space and natural resource preservation as applicable. Opportunity shall be provided for attendees to ask questions regarding the proposal. The applicant shall prepare meeting notes of major points, issues, and responses concerning the development proposal that were discussed at the meeting. Only one neighborhood meeting per development proposal is required, but the applicant may hold more meetings if desired.

**D. Neighborhood Meetings and Application Submittal.** The neighborhood meeting notes, list of parties notified, dated photographs documenting site posting, copies of all materials provided by the applicant at the meeting, and a signature sheet of attendees shall be included with the development application upon submittal. If the development proposal is revised after the neighborhood meeting, with the addition of one or more tax lots or the substantial revision of the development as represented at the initial meeting, a second neighborhood meeting with a new notice shall be required before the revised application is submitted.

**E. Non-compliance with Requirements.** Compliance with the provisions of this Section is a jurisdictional requirement of the City of Damascus. Applications shall not be submitted without this documentation, or submitted prior to the neighborhood meeting without first complying with this Section. If submitted, such application shall not be accepted by the City.

### **Section 17.400.090 Traffic Impact Studies**

The purpose of this Section of the Code is to assist in determining which road authorities participate in land use decisions, and to implement Section 660-012-0045(2)(e) of the State Transportation Planning Rule that requires the City to adopt a process to apply conditions to development proposals in order to minimize impacts and protect transportation facilities. Transportation Impact Studies shall be completed in accordance with the Transportation Impact Study (TIS) Requirements in the Clackamas County Roadway Standards.

## **Chapter 17.401**

### **LAND USE REVIEW AND SITE DESIGN REVIEW**

#### **Sections:**

**Section 17.401.010 Purpose**

**Section 17.401.020 Applicability**

**Section 17.401.030 Land Use Review Procedure and Approval Criteria**

**Section 17.401.040 Site Design Review - Application Review Procedure**

**Section 17.401.050 Site Design Review - Application Submission**

**Requirements**

**Section 17.401.060 Site Design Review Approval Criteria**

**Section 17.401.070 Bonding and Assurances**

**Section 17.401.080 Development in Accordance With Permit Approval;  
Modifications; Permit Expiration**

#### **Section 17.401.010 Purpose**

The purpose of this Chapter is to:

- A.** Provide rules, regulations and standards for efficient and effective administration of land use and site development review;
- B.** Carry out the development pattern and plan of the City and its Comprehensive Plan policies;
- C.** Promote the public health, safety and general welfare;
- D.** Provide adequate light and air, prevent overcrowding of land, and provide for adequate transportation, water supply, sewage, fire protection, pollution control, surface water management, and protection against natural hazards;
- E.** Encourage the conservation of energy resources; and
- F.** Encourage efficient use of land resources, full utilization of urban services, mixed uses, transportation options, and detailed, human-scaled design.

#### **Section 17.401.020 Applicability**

Land Use Review or Site Design Review shall be required for all new developments and modifications of existing developments described below. Regular maintenance, repair and replacement of materials (e.g., roof, siding, awnings, etc.), parking resurfacing and similar maintenance and repair shall be exempt from review.

**A. Land Use Review.** Land Use Review is a review conducted by the City Planning Authority without a public hearing. A Land Use Review shall be completed as part of the Building Permit process unless specifically required to be processed through a Type I or II procedure by this Code (See Chapter 17.400 for review procedure.) It is for changes in land use and developments that do not require a Conditional Use Permit or Site Design Review approval. Land Use Review ensures compliance with the basic land use and development standards of the land use zone, such as lot area, building setbacks and orientation, lot coverage, maximum building height, and other provisions of Article 17.2. Land Use Review is required for all of the types of land uses and development listed below. Land uses and developments exceeding the thresholds below require Site Design Review.

1. Change in occupancy from one type of land use to a different land use;
2. Single-family detached dwelling (including manufactured home on its own lot);
3. A single duplex, or up to two single family attached (town home) units not requiring a land division, and accessory parking on the same lot;
4. Non-residential building additions up to one thousand square feet, or twenty percent of an existing structure, whichever is greater;
5. Minor Modifications to development approvals as defined by Chapter 17.408;
6. Any proposed development that has a valid Conditional Use Permit. Major modifications to a development with a Conditional Use Permit shall require review and approval in accordance with Conditional Use Permits (Chapter 17.404);
7. Home based businesses requiring a permit under Chapter 17.412;
8. Temporary uses requiring a permit under Chapter 17.411;
9. Accessory structures and accessory parking;
10. Development and land uses that are part of a previously approved Site Design Review or Conditional Use Permit application;
11. Public improvements required by a condition of approval (e.g., transportation facilities and improvements, parks, trails, and similar improvements, as determined by the City Authority).

**B. Site Design Review.** Site Design Review is a discretionary review conducted through a Type II or Type III procedure. (See Chapter 17.400 for review procedure.) It applies to all development in the City, except those specifically listed under (A) above. Site Design Review ensures compliance with the land use and development standards in Article 17.2 (e.g., lot area, building setbacks and orientation, lot coverage, maximum building height), and the design standards and public improvement requirements in Article 17.3.

#### **Section 17.401.030 Land Use Review Procedure and Approval Criteria**

When Land Use Review is required, it shall be conducted prior to issuance of Building Permits, Occupancy Permit, Business License, or public improvement permits, as determined by the City Planning Authority. The City shall conduct Land Use Reviews using either a Type I or Type II procedure, as described in Sections 17.400.020 and 17.400.030. A Type I procedure shall be used when the Planning Authority finds that the applicable standards are clear and objective and do not require the exercise of discretion. A Type II procedure shall be used when the decision is discretionary in nature. The City Planning Official shall be responsible for determining the required review procedure. An application for Land Use Review shall be approved only upon meeting all of the following criteria:

- A. The proposed land use or development is permitted by the underlying land use zone (Article 2);
- B. The land use, building/yard setback, lot area, lot dimension, density, lot coverage, building height and other applicable standards of the underlying land use zone and any applicable overlay(s) are met (Article 17.2); and
- C. When development is proposed, the applicable sections of Article 17.3, Design Standards apply. Land Use Reviews do not address a project's compliance with applicable building, fire and life safety regulations.

#### **Section 17.401.040 Site Design Review - Application Review Procedure**

Where Site Design Review is required, it shall be conducted using either a Type II or a Type III procedure. The Type II procedure can be used when the applicant can prove that the development complies with all of the approval criteria contained in Sections 17.401.050 through 17.401.060, below. As an alternative, the Planning Commission may approve an adjustment to the provisions of Article 17.2 through a Type III Site Design Review upon finding that the proposal is consistent with the purpose and intent of the standard(s) to be modified and approval follows innovative or exemplary design solutions. Innovative and exemplary design solutions include elements that are proposed in the interest of achieving superior site development, promoting the Comprehensive Plan vision for a specific area, and developing the site in a manner that is compatible with the surrounding uses and natural systems.

**Section 17.401.050 Site Design Review - Application Submission Requirements**

All of the following information is required for Site Design Review application submittal:

**A. General Submission Requirements.** An application for Site Design Review shall contain all of the information required for the specific review type under Chapter 17.400, and provide:

1. **A Public Facilities and Services Impact Study.** The Impact Study shall quantify and assess the effect of the development on public facilities and services. The City shall advise as to the scope of the Study during the required Pre-Application Conference, Section 17.400.060(C). The Study shall address, at a minimum, the transportation system, including pedestrian ways and bikeways, the drainage system, the parks system, the water system, and the sewer system. For each public facility system and type of impact, the study shall propose improvements necessary to meet City standards and to minimize the impact of the development on the public at large, public facilities systems, and affected private property users; and
2. Traffic Impact Analysis, if required by the road authority.

**B.** In situations where this Code requires the dedication of real property to the City, the City shall either:

1. Include in the written decision evidence that shows that the required property dedication is directly related to and roughly proportional to the projected impacts of the development on public facilities and services, or
2. Delete the dedication as a condition of approval.

**C. Site Design Review Information.** In addition to the general submission requirements an applicant for Site Design Review shall provide the following additional information, as deemed applicable by the City Planning Authority. The Planning Authority may deem applicable any information that he or she needs to review the request and prepare a notice of decision, or in the case of a Type III review, prepare a complete Staff Report and recommendation to the approval body: The City Planning Authority may also waive application requirements that are not germane to a proposal.

1. **Site Analysis Map.** At a minimum the site analysis map shall contain the following:
  - a. The applicant's entire property and the surrounding property to a distance sufficient to determine the location of the development in the City, and the relationship between the proposed development site and



adjacent property and development. The property boundaries, dimensions and gross area shall be identified;

- b. Topographic contour lines at two foot intervals for slopes of less than ten percent, and five foot intervals for steeper slopes;
  - c. Identification of slopes greater than, twenty-five percent;
  - d. The location and width of all public and private streets, drives, sidewalks, pathways, rights-of-way, and easements on the site and adjoining the site;
  - e. Potential natural hazard areas, including any areas identified as subject to a one hundred year flood, areas subject to high water table, and areas mapped by the City, County, or State as having a potential for geologic hazards;
  - f. Resource areas, including wetland areas, streams, and wildlife habitat identified by the City or any natural resource regulatory agencies identified as requiring protection;
  - g. Site features, including existing structures, pavement, large rock outcroppings, areas having unique views, and drainage ways, canals and ditches;
  - h. Locally or federally designated historic and cultural resources on the site and adjacent parcels or lots;
  - i. The location, size and species of trees and other vegetation having a caliper (diameter) of eight inches or greater at four and a half foot diameter breast height (DBH) feet above grade according the requirements of Section 17.302.020(A)(2);
  - j. North arrow, scale, names and addresses of all persons listed as owners of the subject property on the most recently recorded deed; and
  - k. Name and address of project designer, engineer, surveyor, and/or planner, if applicable.
2. **Proposed Site Plan.** The Site Plan shall contain the following information:
- a. The proposed development site, including boundaries, dimensions, and gross area;

- b. Features identified on the existing site analysis maps that are proposed to remain on the site;
  - c. Features identified on the existing site map, if any, which are proposed to be removed or modified by the development;
  - d. The location and dimensions of all proposed public and private streets, drives, rights- of-way, and easements;
  - e. The location and dimensions of all existing and proposed structures, utilities, pavement and other improvements on the site. Setback dimensions for all existing and proposed buildings shall be provided on the Site Plan;
  - f. The location and dimensions of entrances and exits to the site for vehicular, pedestrian, and bicycle access;
  - g. The location and dimensions of all parking and vehicle circulation areas (show striping for parking stalls and wheel stops);
  - h. Pedestrian and bicycle circulation areas, including sidewalks, internal pathways, pathway connections to adjacent properties, and any bicycle lanes or trails;
  - i. Loading and service areas for waste disposal, loading and delivery;
  - j. Outdoor recreation spaces, common areas, plazas, outdoor seating, street furniture, and similar improvements;
  - k. Location, type, and height of outdoor lighting;
  - l. Location of mail boxes, if known;
  - m. Name and address of project designer, if applicable;
  - n. Locations of bus stops and other public or private transportation facilities;
  - o. Locations, sizes, and types of signs; and
  - p. Location of any septic tanks and drain fields, and wells.
3. **Architectural Drawings.** Architectural drawings showing one or all of the following shall be required for new buildings and major remodels:
- a. Building elevations with building height and width dimensions;

- b. Building materials, colors and type; and
  - c. The name of the architect or designer.
4. **Preliminary Grading Plan.** For any site improvement project including grading, a Preliminary Grading Plan prepared by a registered engineer shall be required for development sites. The Preliminary Grading Plan shall show the location and extent to which grading will take place, indicating general changes to contour lines, slope ratios, slope stabilization proposals, and location and height of retaining walls, if proposed. Surface water detention and treatment plans may also be required, in accordance with Section 17.304.050.
5. **Landscape Plan.** A landscape plan may be required, and at the direction of the City Planning Authority shall show the following:
- a. The location and height of existing and proposed fences, buffering or screening materials;
  - b. The location of existing and proposed terraces, retaining walls, decks, patios, shelters, and play areas;
  - c. The location, size, and species of the existing and proposed plant materials (at time of planting);
  - d. Existing and proposed building and pavement outlines;
  - e. Specifications for soil at time of planting, irrigation if plantings are not drought- tolerant (may be automatic or other approved method of irrigation) and anticipated planting schedule; and
  - f. An arborist's report may be required for sites with mature trees that are protected under Chapter 17.302. Landscape, Street Trees, Fences and Walls of this Code.
6. **Sign Drawings** shall be required in conformance with the City's Sign standards.
7. **Deed Restrictions.** Copies of all existing and proposed restrictions or covenants, including those for access control.
8. **Narrative.** Letter or narrative report documenting compliance with the applicable approval criteria contained in Section 17.401.060 Approval Criteria.

9. **Traffic Impact Study.** When required, shall be prepared in accordance with the road authority's requirements.
10. The City may require studies or exhibits prepared by qualified professionals to address specific site features or project impacts (e.g., traffic, noise, environmental features, natural hazards, etc.), in conformance with this Code.

#### **Section 17.401.060 Site Design Review Approval Criteria**

The review authority shall make written findings with respect to all of the following criteria when approving, approving with conditions, or denying an application:

- A. The application is complete, as determined in accordance with Chapter 4.0 - Types of Applications and Section 17.401.050, above;
- B. The application complies with all of the applicable provisions of the underlying Land Use Zones (Article 17.2), including: building and yard setbacks, lot area and dimensions, density and floor area, lot coverage, building height, building orientation, architecture, and other special standards as may be required for certain land uses;
- C. The applicant shall be required to upgrade any existing development that does not comply with the applicable land use zone standards, in conformance with Chapter 17.407, Non-Conforming Uses and Development;
- D. The application complies with all of the Design Standards in Article 3; and
- E. Existing conditions of approval required as part of a prior Land Division (Chapter 17.403), Conditional Use Permit (Chapter 17.404), Planned Development (Chapter 17.406) or other approval shall be met.

#### **Section 17.401.070 Bonding and Assurances**

- A. **Performance Bonds for Public Improvements.** On all projects where public improvements are required, the City shall require a performance bond in an amount equal to one hundred twenty percent of the estimated cost of public improvements as a condition of site development approval in order to guarantee the public improvements. Assurances can be made in the form of a bond, letter of credit from a bank or other acceptable financial institution, or a cash deposit.
- B. **Release of Performance Bonds.** The bond or assurance shall be released when the City Planning Authority finds the completed project conforms to the site development approval, including all conditions of approval.
- C. **Completion of Landscape Installation.** Landscaping shall be installed prior to issuance of Occupancy Permits, unless security equal to the cost of the

landscaping as determined by the City Planning Authority or a qualified landscape architect is filed with the City Planning Authority assuring such installation within twelve months after occupancy. If the installation of the landscaping is not completed within the twelve month period, the security may be used by the City to complete the installation.

**Section 17.401.080 Development in Accordance With Permit Approval; Modifications; Permit Expiration**

Development shall not commence until the applicant has received all of the appropriate land use and development approvals (i.e., Site Design Review approval) and Building Permits. Construction of public improvements shall not commence until the City has approved all required public improvement plans (e.g., utilities, streets, public land dedication, etc.). The City may require the applicant to enter into a Development Agreement (e.g., for phased developments and developments with required off-site public improvements), and may require bonding or other assurances for improvements, in accordance with Section 17.401.070. Development Review and Site Design Review approvals shall be subject to all of the following standards and limitations:

- A. Modifications to Approved Plans and Developments.** Minor modifications of an approved plan or existing development, as defined in Chapter 17.408, shall be processed as a Type I procedure and require only Land Use Review. Major modifications, as defined in Chapter 17.408, shall be processed as a Type II or Type III procedure and shall require Site Design Review. For information on Type I, Type II and Type III procedures, please refer to Chapter 17.400. For Modifications approval criteria, please refer to Chapter 17.405.
- B. Approval Period.** Development Review and Site Design Review approvals shall be effective for a period of two years from the date of approval. The approval shall lapse if:
1. A public improvement plan or building permit application for the project has not been submitted within two years of approval; or
  2. Construction on the site is in violation of the approved plan.
- C. Extension.** The Planning Commission shall, upon written request by the applicant, grant a written extension of the approval period not to exceed two years; provided that:
1. No changes are made on the original approved Site Design Review Plan;
  2. The applicant can show intent of initiating construction on the site within the two-year extension period;

3. There have been no changes to the applicable Code provisions on which the approval was based. If there have been changes to the applicable Code provisions and the expired plan does not comply with those changes, then the extension shall not be granted; in this case, a new Site Design Review shall be required; and
4. The applicant demonstrates that failure to obtain Building Permits and substantially begin construction within two years of site design approval was beyond the applicant's control.

**D. Phased Development.** Phasing of development may be approved with the Site Design Review application, subject to the following standards and procedures:

1. A phasing plan shall be submitted with the Site Design Review application.
2. The Planning Commission shall approve a time schedule for developing a site in phases, but in no case shall the total time period for all phases be greater than seven years without reapplying for Site Design Review.
3. Approval of a phased Site Design Review proposal requires satisfaction of all of the following criteria:
  - a. The public facilities required to serve each phase are constructed in conjunction with or prior to each phase;
  - b. The development and occupancy of any phase dependent on the use of temporary public facilities shall require City Council approval. Temporary facilities shall be approved only upon City receipt of bonding or other assurances to cover the cost of required public improvements, in accordance with Section 17.401.070. A temporary public facility is any facility not constructed to the applicable City or zone standard, subject to review by the City Engineer;
  - c. The phased development shall not result in requiring the City or other property owners to construct public facilities that were required as part of the approved development proposal; and
  - d. An application for phasing may be approved after Site Design Review approval as a modification to the approved plan, in accordance with the procedures for minor modifications (Chapter 17.408).

**Chapter 17.402****LEGAL LOT DETERMINATION****Sections:****Section 17.402.010 Purpose****Section 17.402.020 Criteria****Section 17.402.030 Procedure****Section 17.402.010 Purpose**

The purpose of Chapter 17.402 is to establish criteria and a process for determining when a legal lot of record exists. A legal lot is a unit of land (lot or parcel) that conforms to the applicable regulations that existed at the time the parcel or lot was first created.

**Section 17.402.020 Criteria**

- A.** The lot or parcel was created through an approved and recorded Subdivision or Partition.
- B.** The lot or parcel was created by deed, lease or land sales contract signed prior to any applicable Zoning, Partitioning or Subdivision Ordinances within Clackamas County in 1974.
- C.** The lot or parcel was determined to be a legal lot through a prior Clackamas County approval of a land use decision or Building Permit.
- D.** The lot or parcel is recognized as a legal lot as the result of a court's decision or Oregon Land Use Board of Appeals opinion.

**Section 17.402.030 Procedure**

A lot of record determination shall be made by the City Planning Authority through a Type I procedure prescribed by Chapter 17.400.020. It shall be the property owner's responsibility to demonstrate that his or her plot of land meets the Legal Lot Determination criteria in Section 17.402.020.

**Chapter 17.403****LAND DIVISIONS AND PROPERTY LINE ADJUSTMENTS****Sections:****Section 17.403.010 Purpose****Section 17.403.020 General Requirements****Section 17.403.030 Flexible Lot Size****Section 17.403.040 Preliminary Plat Approval Process****Section 17.403.050 Preliminary Plat Submission Requirements****Section 17.403.060 Approval Criteria: Preliminary Plat****Section 17.403.070 Variances Authorized****Section 17.403.080 Final Plat Submission Requirements and Approval Criteria****Section 17.403.090 Public Improvements Required****Section 17.403.100 Performance Guarantee****Section 17.403.110 Filing and Recording****Section 17.403.120 Re-platting and Vacation of Plats****Section 17.403.130 Property Line Adjustments****Section 17.403.010 Purpose**

The purpose of this Chapter is to:

- A.** Provide rules, regulations and standards governing the approval of Subdivisions, Partitions and Lot Line Adjustments, as defined below and in Chapter 17.102:
  - 1. Subdivisions are the creation of four or more lots from one parent lot, parcel or tract, within one calendar year.
  - 2. Partitions are the creation of three or fewer lots within one calendar year.
  - 3. Lot Line Adjustments are modifications to lot lines or parcel boundaries that do not result in the creation of new lots (includes consolidation of lots);
- B.** Carry out the City's development pattern, as envisioned by the Comprehensive Plan;
- C.** Encourage efficient use of land resources, full utilization of urban services, and transportation options;
- D.** Promote the public health, safety and general welfare through orderly and efficient urbanization;



- E. Provide adequate light and air, prevent overcrowding of land, and provide for adequate transportation, water supply, sewage, fire protection, pollution control, surface water management, and protection against natural hazards; and
- F. Encourage the conservation of energy resources.

### **Section 17.403.020 General Requirements**

#### **A. Subdivision and Partition Approval Through Two-step Process.**

Applications for Subdivision or Partition approval shall be processed by means of a preliminary plat evaluation and a final plat evaluation, according to the following two steps:

1. The preliminary plat must be approved before the final plat can be submitted for approval consideration; and
2. The final plat must include all conditions of approval of the preliminary plat.

#### **B. Compliance with ORS Chapter 92.** All Subdivision and Partition proposals shall conform to State regulations in Oregon Revised Statute (ORS) Chapter 92, Subdivisions and Partitions.

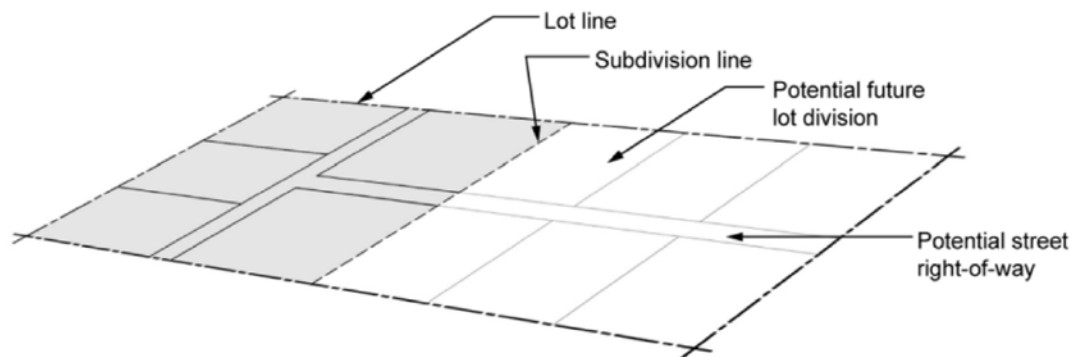
#### **C. Provisions for Interim Development when Public Sewer or Water are Not Available.** Partitioning or Subdivision of land where there is no public sewer or public water available shall meet the following interim development standards. These are intended to allow reasonable land divisions while also preserving land in parcels large enough to help assure the opportunity for future urbanization.

1. The minimum lot size for a parcel created by a Partition or Subdivision when public sewer or water is not available is one acre.
  - a. A Partition may be approved in accordance with an approved Future Re-Division Plan which is submitted with the Partition application. The City shall require the Re-Division Plan lots be of such size, shape, and orientation as to demonstrate and facilitate future re-division in accordance with the requirements of the land use zone and this Code. All structures will be sited so as to conform to the setback standards on identified future lots. A Re-Division Plan for a Partition shall identify:
    - i. Potential future lot division(s), consistent with the density and lot size standards of the applicable zone meeting 80% of the underlying density;

- ii. Potential street right-of-way alignments to serve future development of the property and connect to adjacent properties, including existing rights-of-way; and
    - iii. A disclaimer that the plan is a conceptual plan intended to show potential future development. It shall not be binding on the City or property owners, except as may be required through conditions of land division approval. For example, dedication and improvement of rights-of-way within the future plan area may be required to provide needed secondary access and circulation.
  - b. The Partition application shall include a County Sanitarian approved Septic Suitability Analysis showing how septic service will be provided to each of the partitioned parcels, and evidence of well or water system acceptability to the Oregon Health Authority and Oregon Department of Water Resources especially related to areas of limited groundwater availability.
2. A Subdivision may be approved in accordance with an approved Future Re-Division Plan which is submitted with the Subdivision application. The City shall require the Re-Division Plan lots be of such size, shape, and orientation as to demonstrate and facilitate future re-division in accordance with the requirements of the land use zone and this Code. All structures will be sited so as to conform to the setback standards on identified future lots. A Re-Division Plan for a Subdivision shall identify:
- a. Potential future lot division(s), consistent with the density and lot size standards of the applicable zone;
  - b. Potential street right-of-way alignments to serve future development of the property and connect to adjacent properties, including existing rights-of-way;
  - c. The interim design will demonstrate how future lots and development will comply with open space area(s) 17.202.040 and Natural Resource areas in Chapter 17.309. The open space area(s) does not need to be identified as a separate tract(s) or lot(s) at the interim development stage;
  - d. The Subdivision application shall include a County Sanitarian approved Septic Suitability Analysis showing how septic service will be provided to each of the subdivided lots, and evidence of well or water system acceptability to the Oregon Health Authority and Oregon Department of Water Resources especially related to areas of limited groundwater availability. The Subdivision plan shall show how houses will be sited

on the interim lots; and how and where septic drain fields and wells will be sited, owned and managed;

### Example of Re-Division Plan



- e. A Development Agreement committing the developer, property owner, and subsequent owners to adherence to the re-development plan, including a site drawing of the open space area, when urban density development occurs. The agreement is recorded with the Subdivision Plat. The agreement will commit the property owners and successors to developing or bearing the cost to develop all public infrastructure in accordance with Subdivision development requirements. Nothing in this Section prohibits the decision making authority, property owner or developer from approving a revised Subdivision Plan when the property is proposed to develop at urban densities with public infrastructure; and
  - f. At any time an open space tract can be created through a Partition or Subdivision process that may lower the lot size of the balance of the original parcel or the resultant lot sizes of a Partition or Subdivision being proposed under the interim development standards.. The ownership of the land may be transferred to a public agency or non-profit devoted to the protection of natural features and resources; or ownership can remain with the original owner or successor.
- D.** A property partitioned according to these interim development standards, may not be proposed for a second partition within two years. Interim development density partitioning shall not result in densities greater than one dwelling unit per acre based on the original parcel size prior to code adoption date. However, clustering may be allowed if density does not exceed base zoning amount.
- E. Lot Size Averaging.** Single family residential lot sizes may be averaged to allow lots less than the minimum lot size in Residential zones, as provided by Table 17.201.030A, Flexible Lot Size Option, or through approval of a Planned Development under Chapter 17.406.

**F. Temporary Sales Office.** A temporary sales office in conjunction with a Subdivision may be approved as set forth in Temporary Use Permits (Chapter 17.411).

**G. Minimize Flood Damage.** All Subdivisions and Partitions shall be designed based on the need to minimize the risk of flood damage. All Subdivisions and Partitions and all buildings will be developed and constructed in accordance with any applicable provisions of Flood Hazards Overlay (Chapter 17.205).

**H. Need for Adequate Utilities.** All lots created through land division shall have adequate public utilities and facilities such as sewer, gas, electrical, and water systems. These systems shall be located and constructed to prevent or minimize flood damage, and to avoid impairment of the system and contamination from them during flooding.

**I. Need for Adequate Drainage.** All Subdivision and Partition proposals shall have adequate surface water drainage facilities that reduce exposure to flood damage and improve water quality. Water quality or quantity control improvements may be required.

**Open Space Dedication.** When a residential property is developed as a subdivision or a multifamily project with an average density of four dwelling units per acre or more, the property owner can dedicate 15% as open space and/or parks or pay a parks SDC. The owner can develop a portion of the open space as a park with the total dedication as a minimum of 15%.

#### **Section 17.403.030 Flexible Lot Size**

**A. Flexible Lot Size.** To allow creativity and flexibility in subdivision design and to address physical constraints, such as topography, existing development, significant trees and other natural and built features, the approval body may grant a twenty percent modification to the lot area and/or lot dimension (width/depth) standards in Table 17.201.030(A), provided that:

1. The overall density of the Subdivision does not exceed the allowable density of the zone; and
2. The approval body finds that granting the modification allows for a greater variety of housing types or it improves development compatibility with natural features or adjacent land uses.

**B.** The approval body may require that standard size lots be placed at the perimeter of the development where the abutting lots are standard size or larger; except that this provision shall not apply where the abutting lots are larger than twenty thousand square feet.

**Section 17.403.040 Preliminary Plat Approval Process**

- A. Review of Preliminary Plat.** Review of a preliminary plat processed as a Type II or III review, under Section 17.400.030 or 17.400.040. All preliminary plats shall be reviewed using approval criteria in Section 17.403.060. An application for Subdivision may be reviewed concurrently with an application for a Planned Development under Chapter 17.406.
- B. Review of Final Plat.** Review of a final plat for a Subdivision or Partition shall be processed as a Type I procedure under Section 17.400.020, using the approval criteria in Section 17.403.080.
- C. Preliminary Plat Approval Period.** Preliminary plat approval shall be effective for a period of three years from the date of approval. The preliminary plat shall lapse if a final plat has not been submitted within the 3-year period.
- D. Modifications and Extensions.** The applicant may request changes to the approved preliminary plat or conditions of approval following the procedures and criteria provided in Modifications (Chapter 17.408). The City Planning Authority shall, upon written request by the applicant and payment of the required fee, grant one written extension of the approval period not to exceed two years; provided that:
1. Any changes to the preliminary plat follow the procedures in Chapter 17.408;
  2. The applicant has submitted written intent to file a final plat within the two year extension period;
  3. An extension of time will not prevent the lawful development of abutting properties;
  4. There have been no changes to the applicable Code provisions on which the approval was based. If such changes have occurred, a new preliminary plat application shall be required; and
  5. The extension request is made before expiration of the original approved plan.
- E. Phased Development.**
1. The City may approve a phasing plan and schedule to allow final plat review to occur in two or more phases, each of which includes a portion of the subject property. Approval of a phasing plan and schedule may be granted in consideration of such factors as the size of the proposed development, complexity of development issues, required improvements, and other factors deemed relevant.

- a. The phasing schedule may provide a preliminary plat approval period for the first phase not to exceed four years from the date of the final written decision. If the City's final written decision is appealed, the approval period shall commence on the date of the final appellate decision.
  - b. The phasing schedule may provide a preliminary plat approval period for each subsequent phase not to exceed two years from the end of the prior phase approval period.
  - c. Each phase shall be recorded with the County Clerk within the applicable approval period, or the approval of that phase and all subsequent phases will become void.
  - d. If a final plat for any phase is not recorded within the initial approval period for that phase, a two year time extension for that phase and all subsequent phases may be approved by the Planning Authority.
2. In no case shall a phasing schedule or any time extensions be granted permitting the recording of any phase more than ten years after the date of preliminary plat approval.
3. The criteria for approving a phased land division proposal are:
  - a. Public facilities shall be constructed in conjunction with or prior to each phase;
  - b. The development and occupancy of any phase dependent on the use of temporary public facilities shall require City Council approval. Temporary facilities shall be approved only upon City receipt of bonding or other assurances to cover the cost of required permanent public improvements, in accordance with Chapter 17.304. A temporary public facility is any facility not constructed to the applicable City or district standard;
  - c. The phased development shall not result in requiring the City or a third party (e.g., owners of lots) to construct public facilities that were required as part of the approved development proposal; and
  - d. The proposed time schedule for phased development approval shall be reviewed concurrently with the preliminary plat application, and the decision may be appealed in the same manner as the preliminary plat.

#### **Section 17.403.050 Preliminary Plat Submission Requirements.**

- A. General Submission Requirements.** All preliminary Partition and Subdivision applications shall contain all of the information required for a Type

II and III procedure under Section 17.400.030 or 17.400.040, and the information in Subsections (A)(1 – 2), below:

1. **Public Facilities and Services Impact Study.** The Impact Study shall quantify and assess the effect of the development on public facilities and services. The City shall advise as to the scope of the study during the required Pre-Application Conference. The study shall address, at a minimum, the transportation system, including pedestrian ways and bikeways, the drainage system, the parks system, the water system, and the sewer system. For each public facility system and type of impact, the study shall propose improvements necessary to meet City standards and to minimize the impact of the development on the public at large, public facilities systems, and affected private property users; and
2. **Traffic Impact Study,** if required by the road authority shall conform to the standards and procedures in the Transportation Impact Study (TIS) Requirements section of the Clackamas County Roadway Standards.

**B. Preliminary Plat Information.** The Planning Authority may waive the requirement to submit any of these items when determined to not be necessary in order to evaluate the application. In addition to the general information described in Subsection A above, the preliminary plat application shall consist of drawings and supplementary written material (i.e., on forms and/or in a written narrative) adequate to provide the following information:

1. **General Information:**
  - a. Name of Subdivision (not required for Partitions). This name must not duplicate the name of another Subdivision in Clackamas County - please check with County Surveyor;
  - b. Date, north arrow, and scale of drawing;
  - c. Location of the development sufficient to define its location in the City, boundaries, and a legal description of the site;
  - d. A title block including the names, addresses and telephone numbers of the owners of the subject property and, as applicable, the designer, and engineer and surveyor if any, and the date of the survey if submitted;
  - e. Identification of the drawing as a “preliminary plat”; and
  - f. Any other information required by ORS 92.

**2. Site Analysis:**

- a. *Streets*. Location, name, present width of all streets, alleys and rights-of-way on and abutting the site;
- b. *Easements*. Width, location and purpose of all existing easements of record on and abutting the site;
- c. *Utilities*. Location and identity of all utilities on and abutting the site. If water mains and sewers are not on or abutting the site, indicate the direction and distance to the nearest one and show how utilities will be brought to standards; slopes exceeding ten percent and at two foot intervals for ground slopes of less than ten percent or as required by the City. Such ground elevations shall be related to some established benchmark or other datum approved by the County Surveyor. This requirement may be waived for partitions when grades, on average, are less than six percent;
- d. The location and elevation of the closest benchmark(s) within or adjacent to the site (i.e., for surveying purposes);
- e. Potential natural hazard areas, including any flood plains, areas subject to high water table, landslide areas, and areas having a high erosion potential;
- f. Natural resource lands, including wetland areas, streams, wildlife habitat, and other areas identified by the City or natural resource regulatory agencies as requiring protection. (See also, relevant portions of the Comprehensive Plan.);
- g. Surrounding land uses abutting the site;
- h. Site features, including existing structures, pavement, large rock outcroppings, areas having unique views, and drainage ways, canals and ditches;
- i. Designated historic and cultural resources on the site and adjacent parcels or lots;
- j. The location, size and species of trees having a diameter of eight inches or greater at four and one half feet diameter at breast height (DBH) above grade in conformance with Chapter 17.302;
- k. North arrow and scale;
- l. Name and address of project designer, if applicable; and



- m. The City may require studies or exhibits prepared by qualified professionals to address specific site features and Code requirements.

**3. Proposed Improvements:**

- a. Public streets, alleys, tracts, open space and park land; location, names, right-of-way dimensions, approximate radius of street curves; and approximate finished street center line grades. All tracts that are being held for private use and all reservations and restrictions relating to such private tracts shall be identified;
- b. Easements: location, width and purpose of all proposed easements;
- c. Lots and private tracts (e.g., private open space, common area, or street): approximate dimensions, area calculation (e.g., in square feet), and identification numbers for all proposed lots and tracts;
- d. Proposed uses of the property, including all areas proposed to be dedicated to the public or reserved as open space ,public or private park for the purpose of , recreation, natural resource protection, or other use; potential location of future buildings;
- e. Proposed improvements, as required by Article 17.3 Design Standards, and timing of improvements (e.g., in the case of streets, sidewalks, street trees, utilities, etc.);
- f. Preliminary location of development showing those future buildings can meet siting and dimensional standards of the zone;
- g. The proposed source of domestic water;
- h. The proposed method of sewage disposal;
- i. Proposed method of surface water drainage and treatment if required;
- j. The approximate location and identity of other utilities, including the locations of street lighting fixtures;
- k. Proposed railroad crossing or modifications to an existing crossing, if any, and evidence of contact with the affected railroad and the Oregon Department of Transportation Rail Division regarding proposed railroad crossing(s);
- l. Changes to navigable streams, or other watercourses. Status of public access to these areas shall be shown on the preliminary plat, as applicable;

- m. Identification of the base flood elevation. Written evidence of initiation of a Federal Emergency Management Agency (FEMA) flood plain map amendment shall be required when development is proposed to modify a designated one hundred year flood plain. FEMA approval of the amendment shall be a condition of City land use approval;
- n. Evidence of contact with from the road authority for any development requiring access to its facility(ies); and
- o. Evidence of written notice to the applicable natural resource regulatory agency(ies) for any development within or adjacent to jurisdictional wetlands and other natural resource lands.

**Section 17.403.060 Approval Criteria: Preliminary Plat.**

**A. General Approval Criteria.** The City may approve, approve with conditions or deny a preliminary plat based on the following approval criteria:

1. The proposed preliminary plat complies with the applicable Development Code sections and all other applicable Ordinances and regulations. At a minimum, the provisions of this Article, and the applicable Chapters and Sections of Article 17.2 Land Use Zones and Article 17.3 Design Standards shall apply. Where a Variance is necessary to receive preliminary plat approval, the application shall also comply with the relevant sections of Article 17.4;
2. The proposed plat name satisfies the provisions of ORS Chapter 92;
3. The proposed streets, roads, sidewalks, bicycle lanes, pathways, utilities, and surface water management facilities are laid out so as to conform or transition to the plats of subdivisions and maps of major partitions already approved for adjoining property as to width, general direction and in all other respects. All proposed public improvements and dedications are identified on the preliminary plat;
4. All proposed private common areas and improvements (e.g., homeowner association property) are identified on the preliminary plat;
5. Evidence that any required State and Federal permits have been obtained, or shall be obtained before approval of the final plat;
6. Evidence that improvements or conditions required by the City, road authority, Clackamas County, special districts, utilities, and/or other service providers, as applicable to the project, have been or can be met; and

7. If any part of the site is located within a Specific Area Plan District, Overlay Zone, or previously approved Planned Development, it shall conform to the applicable regulations and/or conditions.

**B. Layout and Design of Streets, Blocks and Lots.** All proposed blocks (i.e., one or more lots bound by public streets), lots and parcels conform to the specific requirements below:

1. All lots shall comply with the lot area, setback, and dimensional requirements of the applicable zone (Article 17.2);
2. Setbacks shall be as required by the applicable zone (Article 17.2);
3. Each lot shall conform to the standards of Chapter 17.301 - Access and Circulation;
4. Landscape or other screening may be required to maintain privacy for abutting uses. See Article 17.2 Land Use Zones, and Chapter 17.302 Landscaping;
5. In conformance with the Uniform Fire Code, a fire apparatus access drive shall be provided to serve all portions of a building that are located more than one hundred fifty feet from a public right-of-way or approved access drive. See Chapter 17.301 Access and Circulation;
6. Where a common drive will be created to serve more than three lots a tract will be created rather than an easement. Conditions will be recorded with the tract ensuring access and maintenance rights will be provided in perpetuity; and
7. All applicable engineering design standards for streets, utilities, surface water management, and easements shall be met.

**C. Conditions of Approval.** The City may attach such conditions as are necessary to carry out provisions of this Code, and other applicable Ordinances and regulations, and may require reserve strips be granted to the City for the purpose of controlling access to adjoining undeveloped properties. See Chapter 17.304 Public Facilities.

1. Conditions of approval requiring property dedication shall be directly related to and roughly proportional to the project impacts of the development on public facilities and services.
2. If the site is abutting an existing farm use, the final plat map shall contain a note that states the following: "This land division is adjacent to an existing farm use subject to ORS 30.936-937 et seq."

**Section 17.403.070 Variances Authorized.**

Variances to the standards of this Chapter shall be processed in accordance with Chapter 17.405, Variance Permits. Applications for Variances shall be submitted at the same time an application for land division or Lot Line Adjustment is submitted, and the applications shall be reviewed together.

**Section 17.403.080 Final Plat Submission Requirements and Approval Criteria.**

**A. Submission Requirements.** Final plats shall be reviewed and approved by the City prior to recording with Clackamas County. The applicant shall submit the final plat within three years of the approval of the preliminary plat. Specific information about the format and size of the plat, number of copies and other detailed information can be obtained from the City Planning Authority.

**B. Approval Criteria.** By means of a Type I procedure, the City Planning Authority and City Engineer shall review the final plat and shall approve or deny the final plat based on findings regarding compliance with the following criteria:

1. The final plat is consistent in design (e.g., number, area, dimensions of lots, easements, tracts, right-of-way) with the approved preliminary plat, and all conditions of approval have been satisfied;
2. All public improvements required by the preliminary plat have been installed and approved by the City Engineer or appropriate service provider (e.g., road authority). Alternatively, the developer has provided a performance guarantee in accordance with Chapter 17.401;
3. The streets and roads for public use are dedicated without reservation or restriction other than reversionary rights upon vacation of any such street or road and easements for public utilities;
4. The plat and deed contain a land dedication to the public and/or appropriate public agency of all public improvements, including but not limited to streets, public pathways and trails, access reserve strips, parks, sewage disposal storm drainage and water supply systems;
5. The applicant has provided copies of all finalized homeowners association Covenants, Conditions and Restrictions (CC&R's) prior to recording; deed restrictions; private easements and agreements (e.g., for access, common areas, parking, etc.); and other recorded documents pertaining to common improvements recorded and referenced on the plat;
6. The plat complies with the applicable Sections of this Code (i.e., there have been no changes in land use or development resulting in a Code violation since preliminary plat approval);

7. Certification by the City or service district, as applicable, that water and sanitary sewer service is available to every lot depicted on the plat; or bond, contract or other assurance has been provided by the subdivider/partitioner to the City that such services will be installed in accordance with Chapter 17.304 Public Facilities, and the bond requirements of Chapter 17.401. The amount of the bond, contract or other assurance by the subdivider/partitioner shall be determined by a registered professional engineer, subject to review and approval by the City. This provision does not apply to Partitions developing in conformance with the interim development standards in Section 17.403.020(C);
8. The plat contains an affidavit by the surveyor who surveyed the land, represented on the plat to the effect the land was correctly surveyed and marked with proper monuments as provided by ORS Chapter 92.

#### **Section 17.403.090 Public Improvements Required**

Before City approval is certified on the final plat, all required public improvements shall be installed, inspected, and approved. Alternatively, the subdivider/partitioner shall provide a performance guarantee, in accordance with Chapter 17.401.

#### **Section 17.403.100 Performance Guarantee**

**A. Performance Guarantee Required.** When a performance guarantee is required under this Section, the subdivider/partitioner shall file an assurance of performance with the City supported by one of the following:

1. An irrevocable letter of credit executed by a financial institution authorized to transact business in the State of Oregon;
2. A surety bond executed by a surety company authorized to transact business in the State of Oregon which remains in force until the surety company is notified by the City in writing that it may be terminated; or
3. Cash.

**B. Determination of Sum.** The assurance of performance shall be for a sum determined by the City as required to cover the cost of the improvements and repairs, including related engineering and incidental expenses.

**C. Itemized Improvement Estimate.** The developer shall furnish to the City an itemized improvement estimate, certified by a registered civil engineer, to assist the City in calculating the amount of the performance assurance.

**D. Agreement.** An agreement between the City and developer shall be recorded with the final plat. The agreement may be prepared by the City or prepared by the applicant as a letter. It shall not be valid until it is signed and dated by both the applicant and City Planning Authority. The agreement shall contain all of the following:

1. The period within which all required improvements and repairs shall be completed;
2. A provision that if work is not completed within the period specified, the City may complete the work and recover the full cost and expenses from the applicant;
3. The improvement fees and deposits that are required; and
4. Optional, a provision for the construction of the improvements in stages and for the extension of time under specific conditions therein stated in the contract.

**E. Failure to Perform.** In the event the developer fails to carry out all provisions of the agreement and the City has un-reimbursed costs or expenses resulting from such failure, the City shall call on the bond, cash deposit or letter of credit for reimbursement.

**F. Termination of Performance Guarantee.** The developer shall not cause termination of nor allow expiration of the guarantee without having first secured written authorization from the City.

#### **Section 17.403.110 Filing and Recording**

**A. Filing Plat with County.** Within sixty days of the City approval of the final plat, the applicant shall submit the final plat to Clackamas County for signatures of County officials as required by ORS Chapter 92.

**B. Proof of Recording.** Upon final recording with the County, the applicant shall submit to the City a mylar copy and five paper copies of all sheets of the recorded final plat. This shall occur prior to the issuance of building permits for the newly created lots.

**C. Prerequisites to Recording the Plat.**

1. No plat shall be recorded unless all ad valorem taxes and all special assessments, fees, or other charges required by law to be placed on the tax roll have been paid in the manner provided by ORS Chapter 92; and
2. No plat shall be recorded until it is approved by the County Surveyor in the manner provided by ORS Chapter 92.

**Section 17.403.120 Re-platting and Vacation of Plats.**

- A. Re-platting and Vacations.** Any plat or portion thereof may be re-platted or vacated upon receiving an application signed by all of the owners as appearing on the deed.
- B. Procedure.** All applications for a re-plat or vacation shall be processed in accordance with the procedures and standards for a Subdivision or Partition (i.e., the same process used to create the plat shall be used to re-plat or vacate the plat). The same appeal rights provided through the Subdivision and Partition process shall be afforded to the plat vacation process. The road authority(ies) shall be notified of all applications for re-plats and street vacations. All street vacations shall also conform to the ORS Chapter 271.
- C. Basis for Denial.** A re-plat or vacation application may be denied if it abridges or destroys any public right in any of its public uses, improvements, streets or alleys; or if it fails to meet any applicable criteria.
- D. Recording of Vacations.** All approved plat vacations shall be recorded in accordance with this Section, and the following procedures:
1. Once recorded, a re-plat or vacation shall operate to eliminate the force and effect of the plat prior to vacation; and
  2. Vacations shall also divest all public rights in the streets, alleys and public grounds, and all dedications described on the plat.
- E. After Sale of Lots.** When lots have been sold, the plat may be vacated only in the manner herein, and provided that all of the owners of lots within the platted area consent in writing to the plat vacation.
- F. Street Requirement.** Except as prohibited by law (e.g., ORS 92.837, Manufactured Home Park), in approving a right-of-way vacation or re-plat, the City may require dedication of access ways, paths or trails as a condition of the vacation of any public easement or right-of- way, in order to establish or maintain a safe, convenient and direct pedestrian and bicycle circulation system. Such requirements shall be coordinated with the applicable road authority.

**Section 17.403.130 Property Line Adjustments**

Property Line Adjustment is the modification of lot boundaries, when no lot is created or removed. The application submission and approval process is as follows:

- A. Submission Requirements.** All applications for Property Line Adjustment shall be made on forms provided by the City and shall include information required for a Type I application, as governed by Section 17.400.020. The

application shall include a preliminary lot line map drawn to scale identifying all existing and proposed lot lines and dimensions; footprints and dimensions of existing structures (including accessory structures); location and dimensions of driveways and public and private streets within or abutting the subject lots; location of significant vegetation; existing fences and walls; and any other information deemed necessary by the City Planning Authority for ensuring compliance with City Codes.

**B. Approval Process.**

1. **Decision-making process.** Property line adjustments shall be reviewed by means of a Type I procedure, as governed by Section 17.400.020, using approval criteria contained in Section 17.403.130(C) below. The road authority(ies) shall be notified of lot line adjustments that may affect property access or traffic volumes or operations on their facilities.
2. **Time limit on approval.** The property line adjustment approval shall be effective for a period of one year from the date of approval, during which time it must be recorded.
3. **Lapsing of approval.** The property line adjustment approval shall lapse if:
  - a. The property line adjustment is not recorded within the time limit in Section 17.403.130(B)(2);
  - b. The Property Line Adjustment has been improperly recorded with Clackamas County without the satisfactory completion of all conditions attached to the approval; or
  - c. The final recording is a departure from the approved plan.

**C. Approval Criteria.** The City Planning Authority shall approve or deny a request for a Property Line Adjustment in writing based on all of the following criteria:

1. **Parcel Creation.** No additional parcel or lot is created or removed by the Lot Line Adjustment;
2. **Lot Standards.** All lots and parcels conform to the applicable lot standards of the zone (Article 17.2) including lot area, dimensions, setbacks, and coverage, and no resulting lot is wholly comprised of a flood hazard area, water quality resource area or jurisdictional wetland; and
3. **Access and Road Authority Standards.** All lots and parcels conform to the standards or requirements of Chapter 17.301 Access and Circulation,



and all applicable road authority requirements are met. If a lot is non-conforming to any City or road authority standard, it shall not be made even less conforming by the Property Line Adjustment.

**D. Recording Property Line Adjustments.**

1. **Recording.** Upon the City's approval of the proposed Property Line Adjustment, the applicant shall record the Property Line Adjustment with Clackamas County within one year of approval (or the decision expires), and submit a copy of the recorded survey map to the City, to be filed with the approved application.
2. **Time Limit.** The applicant shall submit a copy of the recorded property line adjustment survey map to the City within fifteen days of recording and prior to the issuance of any Building Permits on the re-configured lots.

**E. Extension.**

The City shall, upon written request by the applicant and payment of the required fee, grant a written extension of the approval period not to exceed one year provided that:

1. No changes are made to the original property line adjustment as approved by the City;
2. The applicant can show intent of recording the approved plan within the one year extension period;
3. There have been no changes in the applicable Code or plan provisions on which the approval was based. In the case where the Property Line Adjustment conflicts with a Code change, the extension shall be denied; and
4. The extension request is made before expiration of the original approved plan.

**Chapter 17.404****CONDITIONAL USE PERMITS****Sections:****Section 17.404.010 Purpose****Section 17.404.020 Approvals Process****Section 17.404.030 Application Submission Requirements****Section 17.404.040 Criteria, Standards and Conditions of Approval****Section 17.404.050 Additional Development Standards****Section 17.404.010 Purpose**

There are certain uses, which, due to the nature of their impacts on surrounding land uses and public facilities, require a case-by-case review and analysis. These are identified as Conditional Uses in Article 17.2 Land Use Zones. The purpose of this Chapter is to provide standards and procedures under which a Conditional Use may be permitted, enlarged or altered if the site is appropriate and if other appropriate conditions of approval can be met.

**Section 17.404.020 Approvals Process**

**A. Initial Application.** An application for a new Conditional Use shall be processed as a Type III procedure, Section 17.400.040. The application shall meet submission requirements in Section 17.404.030, and the approval criteria contained in Section 17.404.040.

**B. Modification of Approved or Existing Conditional Use.** Modifications to approved or existing Conditional Uses shall be processed in accordance with Modifications (Chapter 17.408).

**Section 17.404.030 Application Submission Requirements**

**A.** In addition to the submission requirements required in Chapter 4.0, an application for Conditional Use Permit approval must include the following information in Subsections (A)(1 – 8), as applicable. For a description of each item, please refer to Section 17.401.050 Site Design Review Application Submission Requirements:

1. Existing site conditions;
2. Site Plan;
3. Preliminary Grading Plan;
4. A Landscape Plan;

5. Architectural drawings of all structures;
6. Drawings of all proposed signs;
7. A copy of all existing and proposed restrictions or covenants; and
8. Narrative report or letter documenting compliance with all applicable approval criteria in Section 17.404.040.

**Section 17.404.040 Criteria, Standards and Conditions of Approval**

The City shall approve, approve with conditions, or deny an application for a Conditional Use Permit or to enlarge or alter a conditional use based on findings of fact with respect to each of the standards and criteria in Subsections (A – B):

**A. Use Criteria.**

1. The site size, dimensions, location, topography and access are adequate for the needs of the proposed use, considering the proposed building mass, parking, traffic, noise, vibration, exhaust/emissions, light, glare, erosion, odor, dust, visibility, safety, and aesthetic considerations;
2. The negative impacts of the proposed use on adjacent properties and on the public can be mitigated through application of other Code standards, or other reasonable conditions of approval; and
3. All required public facilities have adequate capacity to serve the proposal.

**B. Site Design Standards.** The Site Design Review approval criteria Section 17.401.060 shall be met.

**C. Conditions of Approval.** The City may impose conditions that are found necessary to ensure that the use is compatible with other uses in the vicinity, and that the negative impact of the proposed use on the surrounding uses and public facilities is minimized. These conditions include, but are not limited to, the following:

1. Limiting the hours, days, place and/or manner of operation;
2. Requiring site or architectural design features which minimize environmental impacts such as noise, vibration, exhaust/emissions, light, glare, erosion, odor and/or dust;
3. Requiring larger setback areas, lot area, and/or lot depth or width;
4. Limiting the building or structure height, size or lot coverage, and/or location on the site;

5. Designating the size, number, location and/or design of vehicle access points or parking areas;
6. Requiring street right-of-way to be dedicated and street(s), sidewalks, curbs, planting strips to be improved;
7. Requiring landscaping, screening, drainage, water quality facilities, and/or improvement of parking and loading areas;
8. Limiting the number, size, location, height and/or lighting of signs;
9. Limiting or setting standards for the location, design, and/or intensity of outdoor lighting;
10. Requiring berms, screening or landscaping and the establishment of standards for their installation and maintenance;
11. Requiring and designating the size, height, location and/or materials for fences; and
12. Requiring the protection and preservation of existing trees, soils, vegetation, watercourses, habitat areas, drainage areas, historic resources, cultural resources, and/or natural resource lands.

#### **Section 17.404.050 Additional Development Standards**

- A. Concurrent Variance Application(s).** A Conditional Use Permit shall not grant variances to regulations otherwise prescribed by the Development Code. Variance Permit application(s) may be filed in conjunction with the Conditional Use Permit application, and both applications may be reviewed at the same hearing.
- B. Additional Development Standards.** Development standards for specific uses are contained in Article 17.2 Land Use Zones.

**Chapter 17.405****VARIANCE PERMITS****Sections:**

<b>Section 17.405.010</b>	<b>Purpose</b>
<b>Section 17.405.020</b>	<b>Applicability</b>
<b>Section 17.405.030</b>	<b>Class A Variance Permits</b>
<b>Section 17.405.040</b>	<b>Class B Variance Permits</b>
<b>Section 17.405.050</b>	<b>Class C Variance Permits</b>
<b>Section 17.405.060</b>	<b>Variance Permit Application and Appeals</b>

**Section 17.405.010 Purpose**

This Chapter provides standards and procedures for variances, which are modifications to land use or development standards that are not otherwise permitted elsewhere in this Code as exceptions to Code standards. This Code cannot provide standards to fit every potential development situation. The City's varied geography, and complexities of land development, require flexibility. This Chapter provides that flexibility, while maintaining the purposes and intent of the Code. The variance procedures provide relief from specific Code provisions when they have the unintended effect of preventing reasonable development in conformance with all other regulations.

**Section 17.405.020 Applicability**

**A. Exceptions and Modifications Versus Variance Permits.** A Code standard or approval criterion ("Code section") may be modified without approval of a Variance Permit if the applicable Code section expressly allows exceptions or modifications. If the Code section does not expressly provide for exceptions or modifications, then a Variance Permit is required to modify that Code section and the provisions of this Chapter apply.

**B. Combining Variances with Other Approvals; Permit Approvals by Other Agencies.**

Variance requests may be combined with and reviewed concurrently by the City approval body with other land use and development applications (e.g., development review, Site Design Review, Subdivision, Conditional Use Permit, etc.), however, some Variance Permits may be subject to approval by other permitting agencies, such as Oregon Department of Transportation (ODOT) in the case of State Highway access.

**C. Types of Variance Permits.** As provided in this Chapter, there are three types of Variance Permits (Class A, B, or C). The type of Variance Permit required depends on the extent of the Variance Permit request and the

discretion involved in the decision making process. Because some Variance Permits are granted using “clear and objective standards,” they can be granted by means of a Type I procedure. Other Variance Permits, as identified below, require a Type II or III procedure because they involve discretionary decision-making.

**D. Variance Permits not Applicable to Uses.** A Variance Permit shall not be approved that would vary the uses of a land use zone.

#### **Section 17.405.030 Class A Variance Permits**

**A. Applicability.** The following Variance Permits are reviewed using a Type I procedure, as governed by Chapter 17.400, using the approval criteria in Subsection B, below:

1. **Front Yard Setbacks.** Up to a ten percent change to the front yard setback standard in the land use zone.
2. **Interior Setbacks.** Up to a ten percent reduction of the dimensional standards for the side and rear yard setbacks required in the base land use zone.
3. **Lot Coverage.** Up to ten percent increase of the maximum lot coverage required in the base zone.
4. **Landscape Area.** Up to ten percent reduction in landscape area, overall area or interior parking lot landscape area.

**B. Approval Criteria.** A Class A Variance Permit shall be granted if the applicant demonstrates compliance with all of the following criteria:

1. The Variance requested is required due to the lot configuration, or other conditions of the site;
2. The Variance does not result in the removal of trees, or it is proposed in order to preserve trees, if trees are present in the development area;
3. The Variance will not result in violation(s) of any other adopted Ordinance or Code standard; each Code standard to be modified shall require a separate Variance Permit request; and
4. An application for a Class A Variance Permit is limited to one lot per application.

#### **Section 17.405.040 Class B Variance Permits**

**A. Applicability.** Class B Variance Permits include those listed in this Section below. Class B Variance Permits shall be reviewed using a Type II

procedure, in accordance with Chapter 17.400. They must meet the following general approval criteria as well as the specific criteria for the type of Variance Permit being requested:

1. The Class B Variance Permit standards apply to individual platted and recorded lots only; and
2. The Class B Variance Permit procedure shall not be used to modify a standard for lots yet to be created through a Partition or Subdivision process; such requests shall utilize the Class C Variance Permit procedure.

**B. Variance to Minimum Housing Density Standard (Chapter 17.201).** The City may approve a Variance Permit to a minimum housing density standard in Chapter 17.201 after finding that the minimum housing density cannot be achieved due to physical constraints that limit the division of land or site development. “Physical constraint” means steep topography, unusual parcel configuration, or a similar constraint. The Variance Permit approved shall be the minimum Variance necessary to address the specific physical constraint on the development.

**C. Variance to Vehicular Access and Circulation Standards (Chapter 17.301).** Where vehicular access and circulation cannot be reasonably designed to conform to Code standards within a particular parcel, shared access with an adjoining property shall be considered. If shared access in conjunction with another parcel is not feasible, the City may grant a Variance Permit to the access requirements after finding all of the following:

1. There is not adequate physical space for shared access; or
2. There are no other alternative access points on the street in question or from another street; or
3. The access separation requirements cannot be met; and
4. The request is the minimum variance required to provide adequate access;
5. The approved access or access approved with conditions will result in a safe access; and
6. The visual clearance requirements of Section 17.301.020(N) will be met.

**D. Variance to Street Tree Requirements (Chapter 17.302).** The City may approve, approve with conditions, or deny a request for a Variance Permit to the street tree requirements in Chapter 17.302. The City may require the installation of additional or replacement landscaping elsewhere on the site

(e.g., parking lot area trees) to compensate for the street tree Variance Permit. Street tree approval or modification of standards within an Oregon Department of Transportation (ODOT) or Clackamas County right-of-way may require approval, respectively, by ODOT or Clackamas County.

1. Installation of the tree would interfere with existing utility lines, and no substitute tree with a lower canopy is appropriate for the site; or
2. The tree would cause visual clearance problems; or
3. There is not adequate space in which to plant a street tree.

**E. Variance to Parking and Loading Standards (Chapter 17.303).**

1. The City may approve variances to the minimum or maximum standards for off-street parking quantities and dimensions of parking spaces, in Section 17.303.020 upon finding all of the following:
  - a. The individual characteristics of the use at that location require more or less parking than is generally required for a use of this type and intensity, or modified parking dimensions, as demonstrated by a parking analysis or other facts provided by the applicant;
  - b. If additional parking is requested, it cannot reasonably be met through provision of on-street parking or shared parking with adjacent or nearby uses; and
  - c. All other Code standards are met, in conformance with Article 17.2 Land Use Zones and Article 17.3 Design Standards.
2. The City may reduce the number of required bicycle parking spaces per Chapter 17.303.030, if the applicant can demonstrate that the proposed use by its nature would be reasonably anticipated to generate a lesser need for bicycle parking.
3. The City may allow a reduction in the amount of vehicle stacking area required for drive-through facilities if such a reduction is deemed appropriate after analysis of the size and location of the development, limited services available and other pertinent factors.
4. The City may modify loading area standards if such a reduction is deemed appropriate after considering the anticipated shipping or delivery traffic generated by the use; and, alternatives for loading/unloading. Alternatives may include the use of on- or off-street parking areas during non-business hours provided that traffic is not impeded.



- F. Variance Permit to Maximum or Minimum Yard Setbacks to Avoid or Reduce Impacts to Floodplains, Significant Trees, Wetlands, or Other Natural Features (Article 17.2 Land Use Zones).** The City may grant a Variance Permit to the applicable setback requirements of this Code for the purpose of avoiding or reducing impact to floodplains, significant trees, wetlands, or other natural features. Modification of the standard shall not be more than is necessary for the preservation of the nature feature to be protected.
- G. Variances to Transportation Improvement Requirements (Chapter 17.304).** The City may approve, approve with conditions, or deny a Variance Permit to a transportation improvement standard pursuant to Public Works Department Design Standards when the Variance Permit does not exceed ten percent of the standard. When a Variance Permit request to the standards exceeds ten percent, then the request shall be reviewed as a Class C Variance Permit.

#### **Section 17.405.050 Class C Variance Permits**

- A. Applicability.** Class C variance requests are those that do not conform to the provisions of Sections 17.405.030 - 17.405.040 (Class A and Class B), and that meet the criteria in Subsection (A)(1 – 3), below:
1. The Class B Variance Permit standards apply to individual platted and recorded lots only.
  2. The Class C Variance Permit procedure may be used to modify a standard for three or fewer lots, including lots yet to be created through a Partition process.
  3. An applicant who proposes to vary a standard for lots yet to be created through a Subdivision process may not utilize the Class C Variance Permit procedure. Approval of a Planned Development shall be required to vary a standard for lots yet to be created through a Subdivision process, where a specific Code section does not otherwise permit exceptions.
- B. Approval Process.** Class C Variance Permits shall be processed using a Type III procedure, as governed by Section 17.400.040, using the approval criteria in Subsection (C), below. In addition to the application requirements contained in Section 17.400.040, the applicant shall provide a written narrative or letter describing his/her reasoning for the Variance, why it is required, alternatives considered, and compliance with the criteria in Subsection (C).
- C. Approval Criteria.** The City shall approve, approve with conditions, or deny an application for a Class C Variance Permit based on all of the following criteria:

1. The proposed Variance will not be materially detrimental to the purposes of this Code, to any other applicable policies and standards, and to other properties in the same land use zone or vicinity;
2. A hardship to development exists which is peculiar to the lot size or shape, topography, or other similar circumstances related to the property over which the applicant has no control, and which are not applicable to other properties in the vicinity (e.g., the same land use zone);
3. The use proposed will be the same as permitted under this title and City standards will be maintained to the greatest extent that is reasonably possible while permitting reasonable economic use of the land;
4. Existing physical and natural systems, such as but not limited to traffic, drainage, natural resources, and parks will not be adversely affected any more than would occur if the development occurred as specified by the subject Code standard;
5. The hardship is not self-imposed; and
6. The Variance requested is the minimum Variance that would alleviate the hardship.

**Section 17.405.060 Variance Permit Application and Appeals.**

- A. Application.** The Variance Permit application shall conform to the provisions for Type I, II, or III applications in accordance with Article 17.4. In addition, the applicant shall provide a narrative or letter explaining the reason for his/her request, alternatives considered, how the stated Variance criteria are satisfied, and why the subject standard cannot be met without the Variance.
- B. Appeals** to Variance Permit decisions shall be processed in accordance with the provisions of Chapter 17.400.

**Chapter 17.406****PLANNED DEVELOPMENTS****Sections:****Section 17.406.010 Purpose****Section 17.406.020 Applicability****Section 17.406.030 Review and Approvals Process****Section 17.406.040 Modification of Zone Standards (Article 2) and Design Standards (Article 3)****Section 17.406.050 Overlay Zone and Concept Plan Submission****Section 17.406.060 Overlay Zone and Concept Plan Approval Criteria****Section 17.406.070 Administrative Procedures****Section 17.406.080 Detailed Development Plan Submission Requirements****Section 17.406.180 Detailed Development Plan Approval Criteria****Section 17.406.190 Land Use Review, Site Design Review, Final Plat, and Building Permit Approvals****Section 17.406.010 Purpose**

The purposes of this Chapter are to:

- A.** Implement the Comprehensive Plan and applicable land use zone(s) by providing a means for master planning large development sites, or sites with unique physical or ecological attributes;
- B.** Encourage innovative planning that results in projects that benefit the community (i.e., through compatible mixed use development, improved protection of open spaces, transportation options and consistent application of standards in phased developments);
- C.** Encourage developments that recognize the relationship between buildings, their use, open space, and transportation options, providing varied opportunities for innovative and diversified employment environments;
- D.** Facilitate the efficient use of land;
- E.** Promote an economic arrangement of land use, buildings, circulation systems, open space, and utilities;
- F.** Preserve to the greatest extent possible the existing landscape features and amenities that may not otherwise be protected through conventional development;

- G.** Encourage energy conservation and improved air and water quality; and
- H.** Assist the City in planning infrastructure improvements.

**Section 17.406.020 Applicability**

The Planned Development process may be used in any of the City's land use zones. An applicant may elect to develop a project as a Planned Development in compliance with the requirements of this Chapter. In addition, the following types of development shall be processed using the provisions of this Chapter:

- A.** Subdivisions of residential sites four acres and larger.
- B.** Zone designation for large residential sites undergoing annexation.
- C.** Subdivisions containing steep slopes, wetlands or flood plains.

**Section 17.406.030 Review and Approvals Process**

**A. Review Steps.** There are three required steps to Planned Development approval, which may be reviewed individually or combined into one package for concurrent review:

1. The approval of a Planned Development Concept Plan;
2. The approval of a Detailed Development Plan; and
3. The approval of a preliminary Subdivision plat(s) and Site Design Review application(s).

**B. Approval Process.**

1. The Planned Development (PD) Concept Plan shall be reviewed together using the Type III procedure in Section 17.400.040, the submission requirements in Section 17.406.040, and the approval criteria in Section 17.406.060.
2. The Detailed Development Plan shall be reviewed using the Type III procedure in Section 17.400.040, to ensure substantial compliance with the approved Concept Plan.
3. Preliminary Subdivision plats and Site Design Review applications for approved Planned Developments shall be reviewed using a Type II procedure, as governed by Section 17.400.030.
4. Subsections (B)(1 – 3), above may be combined in any manner, so long as the decision making sequence follows that in Section 17.406.030(A), above. Notification and hearings may be combined.

**Section 17.406.040 Modification of Zone Standards (Article 17.2) and Design Standards (Article 17.3)**

The Planning Commission may approve modifications or adjustments to the standards in Article 17.2 and/or Article 17.3 through the Planned Development approval without the need for Variance Permits upon finding that all of the following criteria are met:

- A. Comprehensive Plan.** The modification or adjustment equally or better meets the intent of the Comprehensive Plan and Development Code Section(s) to be modified, as compared to a project that strictly conforms to Code standards;
- B. Public Benefit.** The modification or adjustment results in an overall net benefit to the public may provide for; greater affordability in housing, public amenities, protection of natural features, avoidance of natural hazards (e.g., geological hazards or drainage ways), superior architecture, and/or improved transportation planning in new development;
- C. Public improvement standards and engineering design criteria** shall not be modified without approved modifications to such standards approved by the City Engineer. The City may grant such modifications concurrently with the Planned Development;
- D. Residential densities** shall not exceed those allowed under the Comprehensive Plan;
- E. Commercial and Mixed-Use Developments** may be approved in a Residential Zone Planned Development, provided the commercial component of the project, including building area, parking and landscape/commercial common area, does not exceed ten percent of the subject Planned Development land area. The commercial and mixed-use component shall be subject to the design standards contained in Article 17.3. Design standards may be adapted through the Planned Development approval process. The design standards or modified design standards shall be binding on the project through conditions of approval and a Development Agreement with the City; and
- F. Industrial uses** shall not be allowed in a Residential Zone Planned Development.

**Section 17.406.050 Concept Plan Submission**

- A. General Submission Requirements.** The applicant shall submit an application containing all of the general information required for a Type III procedure, as governed by Section 17.400.040. In addition, the applicant shall submit all of the following:

1. A statement of planning objectives to be achieved by the Planned Development through the particular approach proposed by the applicant. This statement should include a description of the character of the proposed development and the rationale behind the assumptions and choices made by the applicant;
2. A development schedule indicating the approximate dates when construction of the Planned Development and its various phases are expected to be initiated and completed;
3. A statement of the applicant's intentions with regard to the future selling or leasing of all or portions of the Planned Development; and
4. Narrative report or letter documenting compliance with the applicable approval criteria contained in Section 17.406.060.

**B. Additional Information.** In addition to the general information described in Section (A) above, the Concept Plan, data, and narrative shall include the following exhibits and information:

1. A Site Analysis map, as defined in Section 17.401.050 Site Design Review Application Submission Requirements;
2. Conceptual Site Plan (e.g., general land use, building envelopes, circulation, open space, utility connections, and other information necessary to convey the Concept Plan);
3. Grading Concept (for hillside or sloping properties, or where extensive grading is anticipated);
4. Landscape Concept (e.g., shows retention of existing vegetation and general planting areas);
5. Architectural Concept (e.g., information sufficient to describe architectural styles, building heights, and general materials);
6. Sign Concept Plan (e.g., locations, general size, style and materials of signs); and
7. Copy of all existing covenants and restrictions, and general description of proposed restrictions or covenants (e.g., for common areas, access, parking, etc.).

#### **Section 17.406.060 Concept Plan Approval Criteria**

The City shall make findings that all of the following criteria are satisfied when approving or approving with conditions the Concept Plan. The City shall make

findings that the criteria are not satisfied when denying an application:

- A. Land Division Chapter.** All of the requirements for Land Divisions, as applicable, shall be met Chapter 17.403;
- B. Article 17.2 and Article 17.3 Standards.** All of the land use, development, and design standards contained in Articles 17.2 and 17.3 are met, except as may be modified in Section 17.406.040;
- C. Open Space.** Master plans shall conform to the Open Space requirements of Chapter 17.201.040. Open space that is usable for active or passive recreational enjoyment shall be integral to the Master Plan. Plans shall include public gathering places such as plazas, neighborhood parks, trails, gardens, or other publicly accessible spaces that integrate land use and transportation and contribute toward a sense of place. Where public or common private open or park space is designated, the following standards apply:
  - 1. The open or park space area shall be shown on and recorded with the final plat, and
  - 2. The open or park space shall be conveyed in accordance with one of the following methods:
    - a. By dedication to the City as publicly owned and maintained open space or park. Open space or park proposed for dedication to the City must be acceptable to the City Planning Authority with regard to the size, shape, location, improvement, environmental condition (i.e., the applicant may be required to provide a level one environmental assessment), and budgetary and maintenance abilities.
    - b. By conveying title (including beneficial ownership) to a home owners association or similar legal entity, with deed restrictions preventing development of the property for purposes other than that approved by the City. The terms of such lease or other conveyance must include provisions (e.g., maintenance, property tax payment, etc.) suitable to the City.
    - c. Park or Open space will be protected by placing ownership of the Park or open space area in one or more dedicated tax lots, to a homeowners association as common elements, or to the City, a Parks District, or other governmental agency, by being transferred to a land trust, by retention on individual lots, or another arrangement approved by the City.

**Section 17.406.070 Administrative Procedures**

- A. Land Development Record Map.** After a Planned Development has been approved, the land development record map shall be amended, to indicate the approved Planned Development for the subject development site. The approval of the Planned Development shall not expire.
- B. Extensions and Time Limit on Filing of Detailed Development Plan.** Extensions and Time Limits shall be the same as with a Subdivision (Chapter 17.403).

**Section 17.406.080 Detailed Development Plan Submission Requirements**

The contents of the detailed Development Plan shall be determined based on the conditions of approval for the Concept Plan. At a minimum, the detailed Development Plan shall identify the final proposed location of all lots, tracts, parcels, open space, rights-of-way, building envelopes and other features, prior to approval of a Development Permit. The Detailed Development Plan may combine Land Division, Development Review, Site Design Review, and/or other applications for concurrent review and approval. The Detailed Development Plan shall be reviewed using a Type III procedure.

**Section 17.406.090 Detailed Development Plan Approval Criteria**

The City shall approve the Detailed Development Plan upon finding that the final plan conforms to the Concept Plan and required conditions of approval. If the Detailed Plan request combines other land use and development applications, as provided in Section 17.406.030, those applications shall additionally be subject to the applicable approval criteria in Chapter 17.401. Minor changes to the approved Concept Plan may be approved with the Detailed Plan, when the approval body finds that the modification(s) is/are consistent with the criteria in Section (A – H), below. Changes exceeding those in Subsections (A – H), below, must be reviewed as Major Modifications under Chapter 17.408. The following modifications shall ensure that minimum development standards set forth in the Code are met:

- A. Increased residential densities** (overall or reallocated between development phases) by no more than twenty percent, provided such increase conforms to the underlying zone;
- B. Increase in lot coverage or impervious surface** (overall or reallocated between development phases) by no more than fifteen percent over that which is allowed in the underlying zone;
- C. Reduction in open space or landscaping** by no more than ten percent;
- D. Increase in overall automobile parking spaces** by no more than ten percent;



- E. Land use.** No change in land use shall be permitted without a Major Modification to the Concept Plan;
- F. Proposals to add or increase lot coverage** within areas subject to a potential hazard or requiring protection under the Comprehensive Plan shall require a Major Modification to the Concept Plan;
- G. Major changes in the location** of buildings, proposed streets, parking lot configuration, utility easements, landscaping or other site improvements shall require a Major Modification pursuant to Chapter 17.408. “Major” in this subsection means by more than one hundred feet, or fifteen percent, relative to setbacks; and
- H. Other substantial modifications** not listed in Subsection (A – G), above, shall require approval of a Major Modification, in conformance with Chapter 17.408.

**Section 17.406.100 Land Use Review, Site Design Review, Final Plat, and Building Permit Approvals**

- A. Land Use and Site Design Reviews.** For projects requiring Land Use or Site Design Review, all such approvals must be final and appeal periods expired before the City issues Building Permits. Chapter 17.401 applies to Site Design Review.
- B. Land Divisions.** For projects requiring a Land Division, the preliminary Land Division plats must be final and appeal periods expired before a final plat is approved and Building Permits issued. Chapter 17.403 applies to Land Divisions.
- C. Streamlined Review Option.** Applications for preliminary Land Division plats, Land Use Reviews, and Site Design Review applications that are part of an approved Planned Development may be reviewed using a Type II procedure, rather than the conventional Type III procedure. This shall be the applicant’s option. The variation from the standard procedures of Chapter 17.401 Site Design Review, and Chapter 17.403 Land Divisions is intended to streamline review of projects that have received Planned Development approvals, since those projects have previously been subject to public review and hearings.

**Chapter 17.407****NON-CONFORMING USES AND DEVELOPMENTS****Sections:****Section 17.407.010 Purpose****Section 17.407.020 Non-Conforming Uses****Section 17.407.030 Non-Conforming Structures****Section 17.407.010 Purpose**

This Chapter provides standards and procedures for Non-Conforming Uses and Development that do not comply with the Code. The standards for Non-Conforming Uses and Development are intended to provide some relief from Code requirements that were established prior to the effective date of this Code.

**Section 17.407.020 Non-Conforming Uses**

Where a use of land was lawful at the time it was established, or no Codes were in place, but is not now permitted by this Code, the use may be continued as long as it remains otherwise lawful, provided the following are met:

- A. Expansion Prohibited.** No such Non-Conforming Use is enlarged, increased, or extended to occupy a greater area of land or space than was occupied at the effective date of adoption or amendment of this Code. No additional structure, building or sign shall be constructed on the lot in connection with such Non-Conforming Use of land;
- B. Location.** No such Non-Conforming Use shall be moved in whole or in part to any portion of the lot other than that occupied by such use at the effective date of adoption or amendment of this Code;
- C. Discontinuation or Abandonment.** If the Non-Conforming Use of land is discontinued for any reason for a period of more than twelve months, it loses its Non-Conforming status and is subject to all standards of this Code. For purposes of calculating the twelve month period, a use is discontinued or abandoned upon the occurrence of the first of any of the following events:
  - 1. On the date when the use of land is physically vacated;
  - 2. On the date the use ceases to be actively involved in the sale of merchandise or the provision of services;
  - 3. On the date of termination of any lease or contract under which the Non-Conforming Use has occupied the land; or

4. On the date a request for final reading of water and power meters is made to the applicable utility districts.

### **Section 17.407.030 Non-Conforming Structures**

Where a structure exists at the effective date of adoption or amendment of this Code that could not be built under the terms of this Code (e.g. regulation of lot area, lot coverage, height, yard, equipment, access, parking, landscaping, its location on the lot and other requirements concerning the development), and the development was lawful when constructed, the structure may remain on the site so long as it remains otherwise lawful, subject to the following provisions:

- A. Alterations.** No such Non-Conforming Structure, other than an existing single family house, may be enlarged or altered in a way that increases its non-conformity, but any structure or portion thereof may be enlarged or altered in a way that satisfies the current requirements of this Code or will decrease its nonconformity;
- B. Destruction.** Should a Non-Conforming Structure or non-conforming portion of the structure be destroyed by any means to an extent more than seventy-five percent of its current value as assessed by the Clackamas County Assessor, it shall be reconstructed only in conformity with this Code. This Subsection does not apply to existing single family homes, which may rebuild;
- C. Roadway Access.** The owner of a non-conforming access connection (i.e., street or highway access) may be required to bring the Non-Conforming Access into conformance with this Code and other applicable standards as a condition of the City or other roadway authority approving a new Access Connection Permit, or a change in land use; and
- D. Relocation or Removal.** Should such development be moved for any reason and by any distance, it shall thereafter conform to the regulations of this Code.

## **Chapter 17.408**

### **MODIFICATIONS TO APPROVED PLANS AND CONDITIONS OF APPROVAL**

#### **Sections:**

<b>Section 17.408.010</b>	<b>Purpose</b>
<b>Section 17.408.020</b>	<b>Applicability</b>
<b>Section 17.408.030</b>	<b>Major Modifications</b>
<b>Section 17.408.040</b>	<b>Minor Modifications</b>

#### **Section 17.408.010 Purpose**

The purpose of this Chapter is to provide an efficient process for modifying land use decisions and approved development plans, in recognition of the cost and complexity of land development and the need to conserve City resources.

#### **Section 17.408.020 Applicability**

- A.** This Chapter applies to all development applications approved through the provisions of Article 17.4, including:
1. Land Use Review approvals;
  2. Site Design Review approvals;
  3. Subdivisions, Partitions, and Property Line Adjustments;
  4. Conditional Use Permits;
  5. Planned Developments; and
  6. Conditions of approval on any of the above permit types.
- B.** This Chapter does not apply to Comprehensive Plan Amendments, Zone Changes, Text Amendments, Annexations, Temporary Use Permits, or other permits not listed in Subsection (A).

#### **Section 17.408.030 Major Modifications**

- A. Major Modification Defined.** The City Planning Authority shall determine that a major modification(s) is required if one or more of the changes listed below are proposed:
1. A change in land use;
  2. An increase in density by more than ten percent, provided the resulting

density does not exceed that allowed by the zone;

3. A change in setbacks or lot coverage by more than ten percent, provided the resulting setback or lot coverage does not exceed that allowed by the zone;
4. A change in the type and/or location of access-ways, drives or parking areas affecting off-site traffic;
5. An increase in the floor area proposed for non-residential use by more than fifteen percent where previously specified;
6. A reduction of more than ten percent of the area reserved for common open space above required open space; or
7. Change to a condition of approval, or a change similar to Subsections (A)(1 – 6), that could have a detrimental impact on adjoining properties. The City Planning Authority shall have discretion in determining detrimental impacts warranting a major modification.

**B. Major Modification Applications; Approval Criteria.** An applicant may request a Major Modification using a Type II or Type III review procedure, as follows:

1. Upon the City Planning Authority determining that the proposed modification is a Major Modification, the applicant shall submit an application form, filing fee and narrative, and a site plan using the same plan format as in the original approval. The Planning Authority may require other relevant information, as necessary, to evaluate the request;
2. The application shall be subject to the same review procedure (Type II or III), decision making body, and approval criteria used for the initial project approval, except that adding a conditional use to an approved project shall be reviewed using a Type III procedure;
3. The scope of review shall be limited to the modification request. For example, a request to modify a parking lot shall require site design review only for the proposed parking lot and any changes to associated access, circulation, pathways, lighting, trees, and landscaping. Notice shall be provided in accordance with Chapter 17.400; and
4. The decision making body shall approve, deny, or approve with conditions an application for major modification based on written findings on the criteria.

**Section 17.408.040 Minor Modifications**

**A. Minor Modification.** Any modification to a land use decision or approved development plan that is not within the description of a Major Modification as provided in Section 17.408.030(A) above.

**B. Minor Modification Review Procedure.** An application for approval of a Minor Modification shall be reviewed by the Planning Authority using a Type I or a Type II review procedure under Section 17.400.020 or 17.400.030. The Planning Authority is responsible for determining the appropriate review procedure based on the following criteria:

1. Minor modifications that involve only clear and objective Code standards may be reviewed using a Type I procedure;
2. An application that does not decrease the density of the project below the prescribed minimums for the zone;
3. Minor modifications that involve one or more discretionary standards shall be reviewed through Type II procedure; and
4. When the Code is unclear on whether the application should be a Type I or Type II review, a Type II procedure shall be used.

**C. Minor Modification Applications.** An application for Minor Modification shall include an application form, filing fee and narrative, and a Site Plan using the same plan format as in the original approval. The Planning Authority may require other relevant information, as necessary, to evaluate the request.

**D. Minor Modification Approval Criteria.** The Planning Authority shall approve, deny, or approve with conditions an application for Minor Modification based on written findings that the modification is in compliance with all applicable requirements of the Development Code and conditions of approval on the original decision, and the modification is not a Major Modification as described in Section 17.408.030(A), above.

**Chapter 17.409****COMPREHENSIVE PLAN, ZONING MAP AND TEXT AMENDMENTS****Sections:****Section 17.409.010 Purpose****Section 17.409.020 Legislative Amendments****Section 17.409.030 Quasi-Judicial Amendments****Section 17.409.040 Conditions of Approval for Quasi-Judicial Amendments****Section 17.409.050 Record of Amendments****Section 17.409.060 Transportation Planning Rule Compliance****Section 17.409.010 Purpose**

The purpose of this Chapter is to provide standards and procedures for legislative and quasi-judicial amendments to the Comprehensive Plan Map or text elements, Zoning Map or Development Code text. These will be referred to as “Map and Text Amendments.” Amendments may be necessary from time to time to reflect changing community conditions, needs and desires, to correct mistakes, or to address changes in the law.

**Section 17.409.020 Legislative Amendments**

Legislative amendments are policy decisions made by City Council. They are reviewed using the Type IV procedure in Section 17.400.050(4)(g).

**Section 17.409.030 Quasi-Judicial Amendments**

**A. Applicability of Quasi-Judicial Amendments.** Quasi-judicial amendments are those that involve the application of adopted policy to a specific development application or Code revision, and not the adoption of new policy (i.e., through legislative decisions). Quasi-judicial Map Amendments shall follow the Type III procedure, as governed by Section 17.400.040, using standards of approval in Section 17.409.030(B). The approval authority shall be as follows:

1. The Planning Commission shall review and recommend Zoning Map changes that do not involve Comprehensive Plan Map Amendments;
2. The Planning Commission shall make a recommendation to the City Council on an application for a Comprehensive Plan Map Amendment. The City Council shall decide such applications; and
3. The Planning Commission shall make a recommendation to the City Council on a Zone Change application that also involves a Comprehensive Plan Map amendment application. The City Council shall decide both

applications.

**B. Criteria for Quasi-Judicial Amendments.** A recommendation or a decision to approve, approve with conditions or to deny an application for a quasi-judicial amendment shall be based on all of the following criteria:

1. The property and affected area is presently provided with adequate public facilities, services and transportation networks to support the use, or such facilities, services and transportation networks are planned to be provided in the planning period;
2. The change is in the public interest with regard to neighborhood or community conditions, or corrects a mistake or inconsistency in the Comprehensive Plan or Zoning Map regarding the property which is the subject of the application; and
3. The amendment conforms to the Transportation Planning Rule provisions under Section 17.409.060.

**Section 17.409.040 Conditions of Approval for Quasi-Judicial Amendments**

A quasi-judicial decision may be for denial, approval, or approval with conditions; conditions shall be based on applicable regulations and factual evidence in the record. Legislative amendments may only be approved or denied.

**Section 17.409.050 Record of Amendments**

The City Recorder shall maintain a record of Amendments to the text of this Code and the Zoning Map in a format convenient for public use. This shall be located in an Appendix to this Code.

**Section 17.409.060 Transportation Planning Rule Compliance.**

**A. Review of Applications for Effect on Transportation Facilities.** If a proposed rezoning is consistent with the existing Comprehensive Plan Map designation, and consistent with the acknowledged Transportation System Plan, then it can be approved without considering the effect on the transportation system. When a development application includes a proposed Comprehensive Plan Map Amendment, the proposal shall be reviewed to determine whether it significantly affects a transportation facility, in accordance with Oregon Administrative Rule (OAR) 660-012-0060, the Transportation Planning Rule – TPR, and the Traffic Impact Analysis provisions of Section 17.400.090. “Significant” means the proposal would:

1. Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors). This would occur, for example, when a proposal causes future traffic to exceed the levels associated with a “collector” street classification, requiring a change in the classification to an “arterial” street, as identified by the City’s



Transportation System Plan (“TSP”); or

2. Change the standards implementing a functional classification system; or
3. As measured at the end of the planning period identified in the road authority’s adopted Transportation System Plan (TSP)/City’s Comprehensive Plan allow types or levels of land use that would result in levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility; or
4. Reduce the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the road authority’s Transportation System Plan (TSP)/City’s Comprehensive Plan; or
5. Worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard identified in the road authority’s Transportation System Plan (TSP)/City’s Comprehensive Plan.

**B. Amendments That Affect Transportation Facilities.** Except as provided in Subsection (C) Amendments to the Comprehensive Plan and Land Use Regulations which significantly affect a transportation facility shall assure that allowed land uses are consistent with the function, capacity, and level of service of the facility identified in the Transportation System Plan. This shall be accomplished by one of the following:

1. Adopting measures that demonstrate that allowed land uses are consistent with the planned function of the transportation facility; or
2. Amending the Transportation System Plan Comprehensive Plan to provide transportation facilities, improvements, or services adequate to support the proposed land uses; such amendments shall include a funding plan to ensure the facility, improvement, or service will be provided by the end of the planning period; or,
3. Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes of transportation; or
4. Amending the planned function, capacity or performance standards of the transportation facility; or
5. Providing other measures as a condition of development or through a development agreement or similar funding method, specifying when such measures will be provided.

**C. Exceptions.** Amendments to the Comprehensive Plan or Land Use Regulations with a significant effect on a transportation facility, where the facility is already performing below the minimum acceptable performance standard identified in the road authority's Transportation System Plan (Transportation System Plan), City's Comprehensive Plan, may be approved when all of the following criteria are met:

1. The amendment does not include property located in an interchange area, as defined under applicable law;
2. The currently planned facilities, improvements or services are not adequate to achieve the standard;
3. Development resulting from the amendment will, at a minimum, mitigate the impacts in a manner that avoids further degradation to the performance of the facility by the time of the development; and
4. The road authority provides a written statement that the proposed funding and timing for the proposed development mitigation are sufficient to avoid further degradation to the facility.

**Chapter 17.410****CODE INTERPRETATIONS****Sections:****Section 17.410.010****Purpose****Section 17.410.020****Procedure****Section 17.410.030****Appendix of Code Interpretation Decisions****Section 17.410.010 Purpose**

Some terms or phrases within the Code may have two or more reasonable meanings. This Section provides a process for resolving differences in the interpretation of the Code text.

- A.** In interpreting and applying the provisions of this title, they shall be construed as the minimum requirement for the promotion of the public safety, health, and peace and general welfare. It is not intended by this title to interfere with or annul any other covenants or agreements between private parties. However, from the effective date of this Development Code, all divisions and development of land shall conform to this title. When this title imposes a greater restriction upon the use of buildings or premises or upon the height of the buildings, or requires larger space than is imposed or required by other Codes, Ordinances, rules, regulations, covenants or agreements, the provisions of this title shall govern.
- B.** No specific interpretation of this title where clear or objective standards may not exist, or any other discretionary conditions or requirements authorized by this title shall be applied either individually or collectively to deny any application which otherwise meets all stated standards contained in this title. Neither shall any discretionary conditions or requirements be applied to either individually or collectively provide an adverse or negative impact on cost and development time nor to prevent the maximum potential, residential densities or housing types which are permitted by the Comprehensive Plan or this title.

**Section 17.410.020 Procedure**

- A. Type I Procedure.** Code interpretations shall be made using a Type I procedure under Section 17.400.020.
- B. Requests.** A request for a Code Interpretation shall be made in writing to the City Planning Authority.
- C. Decision to Issue Interpretation.** The Planning Authority shall have the authority to interpret the Code, or refer the request to the Planning

Commission for its interpretation. The Planning Authority shall advise the person making the inquiry in writing within fifteen business days after the request is made, on whether or not the City will make an interpretation.

- D. Written Interpretation.** If the City decides to issue an interpretation, it shall be issued in writing and shall be mailed or delivered to the person requesting the interpretation and any other person who specifically requested a copy. The written interpretation shall be issued within twenty business days of the request.
- E. Appeals.** The applicant and any party who received notice or who participated in the proceedings through the submission of written or verbal evidence may appeal the decision to the Planning Commission for a Type III decision. The appeal must be filed within fourteen days after the interpretation was mailed or delivered to the applicant. Initiating an appeal requires filing a notice of appeal with the City Planning Authority pursuant to Section 17.400.040.
- F. Interpretations on File.** The City shall keep on file a record of all Code interpretations. See Article 17.1.

**Chapter 17.411****TEMPORARY USE PERMITS****Sections:****Section 17.411.010 Temporary Use Permits****Section 17.411.010 Temporary Use Permits**

Temporary uses are characterized by their short term or seasonal nature and by the fact that permanent improvements are not made to the site. Temporary uses include, but are not limited to: construction trailers, leasing offices, temporary carnivals and fairs, parking lot sales, retail warehouse sales, and seasonal sales such as fireworks stands. This Section does not apply to Urban Agriculture uses such as Christmas tree sales and produce sales; see Section 17.201.090. Four types of Temporary Uses require permit approval (See A, B, C, and D):

**A. Seasonal and Special Events - Minor.** These types of uses occur only twice in a calendar year and for no longer a period than forty-five days. Using the Type I procedure under Section 17.400.020, the City shall approve, approve with conditions or deny a Temporary Use Permit based on findings that all of the following criteria are satisfied:

1. The use encompasses no more than ten thousand square feet of area;
2. The applicant has proof of the property-owner's permission to place the use on their property;
3. The use provides adequate vision clearance, as required by Section 17.301.020(L), and shall not obstruct pedestrian access on public streets;
4. Ingress and egress are safe and adequate when combined with the other uses of the property; as required by Section 17.301.020 Vehicular Access and Circulation;
5. The use does not create adverse off-site impacts including vehicle traffic, parking, noise, odors, vibrations, glare or lights that affect an adjoining use in a manner in which other uses allowed outright in the zone do not affect the adjoining use; and
6. The use is adequately served by sewer or septic system and water, if applicable. The applicant shall be responsible for obtaining any related permits.

**B. Seasonal and Special Events - Major.** These types of uses occur only twice in a calendar year and for a period no longer than forty-five days. Using the Type II procedure under Section 17.400.030, the City shall approve, approve with conditions or deny a Temporary Use Permit based on findings that all of the following criteria are satisfied:

1. The use encompasses more than ten thousand square feet of area and is permitted in the underlying land use zone and does not violate any conditions of approval for the property (e.g., prior development permit approval);
2. The applicant has proof of the property-owner's permission to place the use on his/her property;
3. No parking will be utilized by customers and employees of the Temporary Use which is needed by the property owner to meet their minimum parking requirement under Chapter 17.303 Vehicle and Bicycle Parking;
4. The use provides adequate vision clearance, as required by Section 17.301.020(L), and shall not obstruct pedestrian access on public streets;
5. Ingress and egress are safe and adequate when combined with the other uses of the property; as required by Section 17.301.020 Vehicular Access and Circulation;
6. The use does not create adverse off-site impacts including vehicle traffic, noise, odors, vibrations, glare or lights that affect an adjoining use in a manner in which other uses allowed outright in the zone do not affect the adjoining use; and
7. The use is adequately served by sewer or septic system and water, if applicable. The applicant shall be responsible for obtaining any related permits.

**C. Temporary Sales Office or Model Home.** Using a Type I procedure under Section 17.400.020, the City may approve, approve with conditions, or deny an application for the use of any real property within the City as a temporary sales office, offices for the purpose of facilitating the sale of real property, or model home in any Subdivision or tract of land within the City, but for no other purpose, based on the following criteria:

1. Temporary sales office:
  - a. The temporary sales office shall be located within the boundaries of the Subdivision or tract of land in which the real property is to be sold;

- b. The property to be used for a temporary sales office shall not be permanently improved for that purpose; and
- c. Conditions may be imposed regarding temporary utility connections, and as necessary to protect public health, safety, or welfare.

2. Model house:

- a. The model house shall be located within the boundaries of the Subdivision or tract of land where the real property to be sold is situated; and
- b. The model house shall be designed as a permanent structure that meets all relevant requirements of this Code and other applicable Codes and permit requirements.

**D. Temporary Building, Trailer, Kiosk, or Structure.** Temporary or permanent placement of a building, trailer, kiosk, or structure, including but not limited to prefabricated building(s), for use on any commercial or industrial zoned property within the City shall require a development permit. Using a Type II procedure, as governed by Section 17.400.030, the City may approve, approve with conditions, or deny an application for a placement of a building, trailer, kiosk, or structure for temporary use, or temporary placement, such as a temporary commercial or industrial use or space associated with the primary use on the property, based on the following criteria:

- 1. The temporary trailer or building shall be located within the specified property line setbacks of the parcel of land on which it is located;
- 2. The primary use on the property to be used for a temporary trailer is already developed;
- 3. Ingress and egress are safe and adequate as demonstrated by an Approach Permit approved by the road authority, as applicable, and complies with Section 17.301.020 Vehicular Access and Circulation;
- 4. There is adequate parking for the customers or users of the Temporary Use as required by Chapter 17.303 Bicycle and Vehicle Parking;
- 5. The use will not result in vehicular congestion on streets;
- 6. The use will pose no impediment or hazard to pedestrians in the area of the use;
- 7. The use does not create adverse off-site impacts including vehicle traffic, noise, odors, vibrations, glare or lights that affect an adjoining use in a

manner which other uses allowed outright in the zone do not affect the adjoining use;

8. The building complies with applicable Building Codes;
9. The use can be adequately served by sewer or septic system and water, if applicable. The applicant shall be responsible for obtaining any related permits;
10. The length of time that the temporary building will be used does not exceed six months. When a temporary building exceeds this time frame, the applicant shall be required to remove the building, or renew the Temporary Use Permit; and
11. Conditions may be imposed regarding temporary utility connections, and as necessary to protect public health, safety, or welfare.



## **Chapter 17.412**

### **HOME BASED BUSINESS PERMITS**

#### **Sections:**

#### **Section 17.412.010 Home Based Business Permits**

#### **Section 17.412.010 Home Based Business Permits**

##### **A. Purpose.**

The purpose of this Section is to encourage those who are engaged in small commercial ventures that do not conform to the Special Standards for Certain Uses in Section 2.1.090(E) Home Based Business.

The standards referenced above allow home based businesses as outright permitted uses that do not require Development Review or Site Design Review. This Chapter provides a process for more intense home based businesses to be allowed with analysis and approval by the Planning Authority and notice to surrounding property owners with the right of appeal to the Planning Commission.

These home based business may be permitted, with conditions of approval when appropriate, in order to increase the benefits of people working and living in the same place, while protecting neighboring residents from adverse impacts of home based business activities. These benefits to the business owner and to the general public include: reduced number of commute-to-work trips, day-time “eyes on the street” at the residence, and a neighborhood-scale version of mixed residential and commercial uses.

##### **B. Approval Process and Criteria.**

1. **Home Based Business Permit.** Applications for proposals that cannot meet all of the standards in Section 2.1.090(E) shall be processed using a Type II procedure, as governed by Chapter 17.400.030, using the approval criteria in Subsection (B)(2), below. In addition to the application requirements contained in Section 17.400.030(A)(1 - 2), the applicant shall provide:
  - a. A written narrative or letter describing the proposed home based business;
  - b. Demonstrating compliance with those standards in Subsection 17.201.090(E) that can be met, and explaining why the other standards in Subsection 17.21.090(E) cannot be met, and

- c. Demonstrating compliance with the criteria in Subsection (B)(2) below:
- 2. A Site Plan, not necessarily to scale, of the lot proposed for the home based business, including:
  - a. The property lines and their dimensions;
  - b. Outlines of the foundations of all buildings proposed for home based business use with dimensions for each wall, and the distances from each wall to the nearest property line;
  - c. Boundaries and dimensions of driveways and parking areas, indicating areas for use by home based business employees and customers;
  - d. Outlines of the foundations of abutting residences, and the distances from the shared property line to the nearest wall of each neighboring residence; and
  - e. Identifying the buildings and areas of those buildings in which home based business activities will take place, and identifying which activities will take place in which buildings and areas.
- C.** The City shall approve, approve with conditions, or deny an application for a Type II home based business based on all of the following criteria:
  - 1. The proposed use will not be materially detrimental to the stated purposes of applicable Code requirements and to other properties within a radius of one hundred feet of the subject property;
  - 2. Impacts to surrounding properties may exist but can be mitigated; and
  - 3. Existing physical and natural systems, such as, but not limited to drainage, natural resources, and parks, will not be adversely affected any more than would occur if the development occurred in compliance Chapter 17.300 Design Standards Purpose and Applicability.

**Chapter 17.413****TRANSFER OF DEVELOPMENT CREDITS ADMINISTRATION****Sections:****Section 17.413.010****Development Credits****Section 17.413.010 Development Credits****A. Purpose.**

The purpose of this Section is to provide a means of administering the transfer of Development Credits from one property owner to another, and to assure those credits are accurately created and applied during the development of land.

**B. Definitions.** For the purpose of this Section the following definitions are established:

**Receiving Area.** A designated area of land within the Damascus City Limits to which a holder of development rights generated from a sending area may transfer the development rights, and in which additional residential or other uses or development, not otherwise allowed, are allowed by reason of the transfer.

**Sending Area.** A designated area of resource land within the Damascus City Limits from which development rights generated from forgone development are transferable, for residential uses or development not otherwise allowed, to a receiving area.

**Transferable Development Credit (TDC).** A severable residential development interest in real property that can be transferred from a lot, parcel, or tract in a sending area to a lot, parcel, or tract in a receiving area. This term has the same meaning as “transferable development credit” under Oregon Laws 2009, Chapter 504, Section 2(10).

**C. Applicability.** Transfer of Development Credits can only occur in accordance with the standards found in Section of the Damascus Development Code.**D. Development Credit Certificate.**

1. Transfer of Development Credits will only occur within a process of creating the credit and utilizing the credit with that credit reflected in a certificate, as described below.

2. Certificate for Development Credits.

- a. The Certificate for Development Credits will only be a form created or approved by the City Attorney.
  - b. A Certificate for Development Credits will be recorded with the County against the sending area. The certificate recordation will run with the land in perpetuity so as to clearly reflect the diminished density allowed on the property.
  - c. A Certificate for Development Criteria may be sold or otherwise transferred to the owner of a receiving area thereby generating the receiving area owner with additional density at time of development, which may be utilized as part of a development application at any time, regardless of the original creation date of the certificate or the date of its transfer to the owner of a receiving area.
  - d. The City shall maintain a record of Development Credits indicating the property of the sending area and the number of credits generated from the sending area reflected on the certificate. The record will also reflect the use of the credits recording the properties to which the credits are transferred, including the number of credits.
  - e. The density credit reflected in a Certificate of Development Credits may be transferred to one or more receiving areas as long as the total number of density credits is not exceeded.
  - f. Upon depletion of the credits reflected in a Certificate of Development Density, a document will be recorded against the property of the sending area, in a form approved or created by the City Attorney, declaring no further value remains in the Certificate.
3. The owner of a sending area may initiate the creation of a Certificate of Development Credit. Development credit Certificates will be reviewed and approved as a Type I process. The City will verify the eligibility of the sending area for the creation of credits, and the number of credits in accordance with the provisions of Damascus Development Code Chapter 17.300.
4. An applicant for a development may submit with the application proof of a certificate for Development Credits, and may reflect in the design of the proposed project density above the base density of the zone consistent with the number of credits, up to the allowable maximum density of the zone.